SUPPLEMENT

TO THE

BOSTON MEDICAL AND SURGICAL JOURNAL.

WEDNESDAY, OCTOBER 6, 1852.

The Ether Controversy.

There having been many mis-statements, not to say falsehoods, put forth, especially in this community, in regard to the "Ether Controversy," we have thought that the importance and interest of the subject were sufficient to warrant the publication of the late Debate in the U. S. Senate, reviewing the whole matter. The document exceeding in extent the space which the present crowded state of our columns would permit us to devote to its insertion in the body of the paper, we issue it in a Supplement. The public will thus be enabled to judge fairly and impartially of the real merits of this greatest of modern discoveries in the medical world.

SULPHURIC ETHER.

DEBATE IN THE SENATE,

SATURDAY, AUGUST 28, 1852.

The Senate having under consideration the bill making appropriations for the support of the Army for the year ending June 30th, 1853—

Mr. BORLAND, from the Committee on Military Affairs, submitted the following amendment, to come in after the appropriation for the medical and hospital department of the Army:

To enable the President of the United States to procure the surrender of the patent issued to William T. G. Morton on the 19th day of November, 1846, for his discovery of the anæsthetic properties of sulphuric ether, $100,000.

Mr. BORLAND. Mr. President, if the Senate will give me their attention for a few moments, I think I can put this matter on its true merits. The proposition is to appropriate $100,000 to enable the President of the United States to purchase from a patentee his patent, or the privilege of using property to which he holds exclusive right under his patent.

The first inquiry that we make is: Is that which we propose to purchase valuable?—and, if it is, what is its value? I will not undertake to go into a detail of facts, or any argument to show the value of the discovery of the application of sulphuric ether as an anæsthetic agent. It is a subject which has been before the public so long, that I apprehend every Senator is familiar with its history, and the character of the discovery. I state what I apprehend no one will controvert—I state as a member of the medical profession, representing, in that respect, I think truly, the universal sentiment of the profession throughout the world—that as a discovery beneficial to the human race, if it be second to any which has ever been given to the world, it is second to vaccination alone. I know that the universal sentiment of the medical profession, so far as that sentiment has been expressed, is, that it is second to vaccination. But I also know, and state with confidence, that an immense number, almost an equal number, of the medical profession think it is of equal value; and many of the very highest authority consider it of much greater value than, even vaccination to the human race. So much for the estimation in which it is held by the medical profession throughout the world.

Then, sir, for the estimation in which it is held by the officers of our Government, who have availed themselves of its use in the public service, I have before me letters from the Secretary of War, from the Secretary of the Treasury, from the Secretary of the Navy, from the head of the Medical Department of the Navy, and from the head of the Medical Department of the Army—all concurring in assigning to this discovery, as used in the public service, the very highest value; and expressing the wish, that the Government might, by proper means, avail itself of the right to use it in the public service. I will not read these letters. It would occupy too much time of the Senate to do so. But if any Senator should desire their reading, they can be read. All assume, that it is of the very highest value, both to the Army and Navy; that it has been availed of for years past; and that incalculable benefits have resulted to the public, in saving life and allaying human suffering, greater than has ever been derived from any one source. It is a well-known fact, that, in the Army and Navy, in the performance of all important surgical operations, this agent is now very rarely, if ever dispensed with. And not only so, in the Army and Navy—not only is it used in saving life and suffering on the part of our soldiers, and our sailors, but throughout the private practice of the country, the most eminent surgeons and physicians resort to it now habitually, and declare that it has become one of the most important and valuable agents which they have in the profession. If there were time, I could go on for hours in giving the particulars, giving the *modus operandi*, giving the cases by name, and by number, till they would count thousands upon thousands; but there is no time at this period of the session for that.

The next point I would present is, how far it is recommended to our consideration? The Select Committee of the House of Representatives, to whom this matter was referred—although, as the Senator from Connecticut suggests, they did not formally make their report, yet it was only because no opportunity was afforded for them to do so—have prepared a report—it is here before me—a most elaborate, learned, and conclusive report as to the incalculable value of this agent, and the propriety, in the opinion of that committee, of its being availed of by the Government.

Sir, it may be asked if this be so valuable—if this individual has a patent for it, why does he not avail himself of the use of the patent, and prevent the use of sulphuric ether as an anæsthetic agent without recompense to him? I need hardly remind the Senate of the fact, that it is one of those cases in which he cannot enforce his legal rights. How can he, sir? Why, this agent is used in every State and county in this Union; and it may be, and perhaps is, used in almost every family where physicians practice. He has no practical remedy for the violation of his patent. Can he go to the bedside of the sick and suffering patient, who is undergoing an operation under the influence of this agent, and lay an injunction upon

its use on such an occasion? Certainly not. It is one of those cases which must strike the mind of every man that his patent, so far as the legal remedy extends, is worthless to him, although he has the legal right, for he holds the patent from the United States to its exclusive use for a certain term of years.

The next question is, Is the individual who holds the patent lawfully entitled, if any one, to be paid for the use of this agent? I say, he is. I have before me here a copy of his patent, and of the record in our Patent Office. The official acts of our officers have recognized and established, as our laws require, the identity of this individual as the lawful owner. It has been stated, I know, and may be repeated, that there is an adverse claimant; that there is another individual who claims to be the discoverer, and who has a title to at least a portion of the compensation which we propose to pay. But to meet that I have to show that if that individual ever had any right to be considered the discoverer, or any title to compensation, it has been relinquished for a consideration in favor of Dr. Morton; for here I have from the Patent Office an official announcement to that effect, which is signed by Dr. Jackson, the only individual that I know of who sets up an adverse claim to this discovery. But there is evidence before us from the very highest medical men in the country, and from the very highest medical officers of the Army and Navy, all recognizing Dr. Morton as the discoverer of this invaluable agent. But even if that were not so, the only other individual who sets up a claim to it has already, in the most solemn form, relinquished it forever, and assigned over to Dr. Morton all right or claim which he (Dr. Jackson) ever did have or could have. So that the point is settled that Dr. Morton stands before us as the patentee lawfully entitled to this discovery as the original discoverer.

In the next place, lest it might occur to the minds of some that purchasing the right from a patentee to use a valuable discovery is a new thing in our Government, I beg leave to call attention to the records, which show that it is no new practice, but for years and years has been repeated over and over again. I will cite a few cases. We paid for the right to make anchors of a certain form for the Navy, $1500; for the use of circular bullet moulds, $5000; for the use of gas in vapor baths, $5000; for elevating and pointing heavy cannon, $20,000; for the right to use patent antifriction metal, $20,000. We paid to the heirs of Robert Fulton, for benefits conferred by his improvements in steam navigation, $76,300. We paid for Mix's manger stopper, used in the cavalry service, $3000. We paid to Dr. Locke, for the use of his magnetic clock, $10,000. We paid to McCulloch & Booth, for the right to use the improved method of refining our argentiferous gold bullion, $25,000;—thus making an aggregate of $165,000 paid in these cases. But, in addition to these, there have been numerous instances in which patent rights, or the privilege of using in the service of the Government patented articles, have been purchased by the Departments, some of which instances I find cited in connection with the report of the Select Committee of the House of Representatives, for which were paid $178,032; making an aggregate of $343,000 paid by the United States for patents and the use of patented articles.

Since I have been a member of the Senate, when meritorious individuals have come before us, who had made important discoveries, we have aided them to test their discoveries, by appropriations, amounting in the whole to $120,000.

I mention these facts to show that precedents are all in favor of such use of the public money to enable the Government to avail itself of important discoveries.

I will detain the Senate by saying more on this subject. I will briefly sum up. This discovery is a most valuable one to the human family at large. The two branches of our public service, the Army and Navy, have availed themselves extensively of it. It is one of the most valuable remedial agents that the world has ever known. It is in constant and growing use. This idea which we are thus using, not only prolongs human life, and protects our soldiers and our sailors, and all in our public service from immense suffering, but it is saving in that mode of treating diseases, thousands upon thousands of dollars every year and every month. This individual cannot enforce his legal rights against anybody, owing to the very nature of the case. We are making use of his property to our great benefit, and he is receiving no compensation whatever for it. Then the papers before me, as I have read them, show that he is the individual who is entitled to compensation, if any one, for the use of this property. We find that the practice of the Government—a very enlightened and useful practice, in my opinion—has been in favor of appropriations of this sort. Then, sir, I ask if this is not a proper occasion for the continuance of this practice? When was there ever before us a more meritorious case? The medical profession throughout the country sustain me in the assertion that this is the most valuable remedial agent that ever has been known. How can we, then, in justice to ourselves, in common justice to the individual who has furnished us this valuable, or rather invaluable remedy, refuse to pay him for it?

MR. SMITH. Mr. President, I do not know that I have been at any time since I have been in Congress, more surprised than I was yesterday, to learn that this Dr. Morton, in place of presenting a petition to the Senate, had, without the knowledge of other parties in interest—without the knowledge of other members of the Senate—gone before the Committee on Military Affairs, and I believe the Committee on Naval Affairs, had an *ex parte* hearing, and induced them to make a report, by way of amending a general appropriation bill. I knew that he had presented a petition to the House of Representatives. I knew that he had caused a select committee to be raised there, which we all know is ordinarily favorable to the object to be effected by it. I knew that he had been before them, and that the committee had decided to draw up a report in his favor, which report he had caused to be printed at his own expense, and was circulating among members of Congress. But, sir, I did not dream that he was seeking to obtain the judgment of one of the standing committees of this body, without any knowledge or any information to other parties who were deeply interested in this subject, and who would have come before that Committee for the purpose of submitting considerations and facts that have a very important bearing on the subject.

Now, I have to say, in the first place, that Dr. Morton has made no discovery which is patentable. It is true that he went into the Patent Office here several years ago, and took out a patent for what he was pleased to denominate a "*letheon*." The mere idea that this article—I do not know exactly what he called it—is patentable, I believe is the object of contempt and ridicule among the medical profession throughout the whole country. I desire to know what Dr. Morton pretends to have discovered? Has he discovered sulphuric ether? Nobody pretends that he has. Has he discovered that sulphuric ether can be taken into the lungs with impunity? Why, when I was a boy in college, I saw it administered over and over again. I believe we used to denominate it "laughing gas," and we were greatly amused with the antics which would be performed by young gentlemen when they had taken it into their lungs.

MR. SHIELDS. I do not wish to interrupt the honorable Senator, but I think he is mistaken in a matter of fact; but perhaps I had better not correct the Senator until after he gets through.

Mr. SMITH. I would like to be corrected now.

Mr. SHIELDS. Then I venture to say that the Senator at college never saw sulphuric ether administered.

Mr. SMITH. Well, nitrous oxyd gas and chloroform produce the same effect. I have seen nitrous oxyd administered while I was at college, and my honorable friend from North Carolina [Mr. Badger] will recollect the time when he and I were at Yale College, and often saw it administered. Nitrous oxyd gas, chloroform, and sulphuric ether produce exactly the same effect. It seems to make no difference whether you use one or the other; but I believe the medical profession generally believe that this species of ether is, under all the circumstances of the case, the best to be administered. But I desire to inquire of my honorable friend from Illinois, who seems to have formed an opinion on this subject, what this gentleman claims? Does he claim to have discovered sulphuric ether? Does he pretend to have discovered that it could be taken into the lungs with impunity? Not at all.

Mr. SHIELDS. I will answer the Senator. I presume these elements commenced at the creation of the world, but this individual first discovered their use and application.

Mr. SMITH. I insist that he has discovered nothing whatever. That a discovery has been made, I admit; and that discovery is, that the effect of ether, or nitrous oxyd gas, or chloroform, taken into the lungs, is to produce insensibility in the human system. That is all the discovery there is about it. I say that nitrous oxyd gas and chloroform will produce exactly the same effect. I agree with the honorable gentleman from Arkansas, that this substance, when taken into the lungs, will produce insensibility in the subject under the operation of the knife. I agree with him, that it is a great boon to humanity; but I deny that it is a patentable discovery. It is a mere ascertaining of a particular effect of a thing that has been known for I do not know how long. For the last fifty years, physicians have been administering nitrous oxyd gas, sulphuric ether, and chloroform; but they had not found out that under the effect of these substances the knife could be applied to the system without producing pain. This gentleman came down here, and went into the Patent Office, and undertook to get a patent there for certain specifications, telling how this ether could be compounded and administered, and then pretended to get up some sort of patent for it. A patent for a particular effect! Who ever heard of a patent being granted for the discovery of a mere effect? It is not a "machine," not an "art," not a "composition of matter," which are patentable under our laws; but it is a discovery that a certain matter will produce a certain effect. I say that is not patentable. I am willing to leave it to any lawyer in this chamber that an effect is not patentable. This individual never sold a patent right, and never pretended to sell a patent right; and I repeat again, that the mere idea that ascertaining the effect of an old and known article is the subject of contempt and ridicule all over the northern country.

Mr. BROOKE. I would ask the Senator from Connecticut, if he considers Daniel Webster a lawyer?

Mr. SMITH. I have a little bit of a suspicion that he is. [Laughter.]

Mr. BROOKE. Then I would refer the Senator to his opinion, given as a lawyer, that this discovery is patentable.

Mr. SMITH. That may be so; but if it be so, why does not this patentee assert his rights? If he has got any rights under his patent, why does he not sue somebody for their violation? He has never instituted a suit. He has never pretended to enforce the patent in any shape or form. The physicians, surgeons, and dentists all over this continent and all over Europe, are using sulphuric ether as an anæsthetic agent, and he has never demanded a penny from them. He knows well enough, that he could not recover a penny of damages, if he were to sue them for a violation of his patent rights; I do not care who makes any assertion to the contrary. In my own State, in every State of this Union, it has been administered. I have seen it administered to patients in this city. Why does he not institute a suit against somebody?

Mr. JONES, of Iowa. The United States cannot be sued.

Mr. SMITH. I know the United States cannot be sued; but can a surgeon in the army of the United States use a patented article with impunity? If this individual has a right to the exclusive use, under his patent, why does he not get Mr. Webster, or somebody else, to sue some surgeon for using the article thus patented?

I have got at my quarters a petition from the widow of Dr. Horace Wells, of Hartford, Connecticut, which has been transmitted to me within the last few months, and which is addressed to the Senate of the United States. I have been requested to lay it before the Senate, and present the claims of Dr. Horace Wells, deceased, as being the actual discoverer of the anæsthetic effects of sulphuric ether. Why have I not presented it to the Senate? Because it was so late in the session that I did not suppose the subject could be investigated. I did not dream that there was any inquiry going on in regard to it before any of the standing committees of this body.

I assert here now, that in the city of Hartford, all the physicians and surgeons living there, all of the eminent members of the legal profession—the whole community in fact—believe that Dr. Horace Wells, deceased, was the real discoverer of this important effect of sulphuric ether, or nitrous oxyd gas, or whatever may be used to produce this effect. I have the most abundant testimony to prove this. I have in my possession sworn depositions; I have certificates of physicians; I have a vast mass of testimony which I can bring before the Senate on this subject. Yet, sir, here has been an *ex parte* hearing without the knowledge of parties interested, and before a committee of the Senate without the subject ever having been referred to them. And now, without the knowledge of Mrs. Wells, without the knowledge of any of her friends, and without any opportunity for her to be heard, it is proposed to take a snap judgment and an *ex parte* judgment upon her.

The honorable Senator from Arkansas says that the fact that Dr. Morton obtained a patent for what is denominated "letheon," establishes some right in him, and precludes us from an investigation! Does not my honorable friend know that all these proceedings for patents are *ex parte*? Does he not know that they are not binding on other discoverers? Does he not know that other parties who claim to have made a discovery have a right to contest the validity of the patent, and that the patent passes for nothing if the opposing claim is established? It is true the patent is *prima facie* evidence; but does it establish anything in opposition to parties who had no opportunity to be heard before the Commissioner? It is certainly no more than *prima facie*, and we are at liberty to contest it in the courts of justice. We have a right to go before a jury; we have a right to prove the facts. And I pledge whatever reputation I may have, that if the Senate will allow me, at the next session of Congress, an opportunity to be heard on this subject, I will make out a case for the family of Dr. Horace Wells, deceased. If the subject shall then be referred to the judgment of a committee of this body, I will be prepared to make out a case worthy the most grave and serious consideration.

What an extraordinary course is it that is now being pursued! We have here a man presenting

his petition to the House of Representatives, getting a report in his favor there, and without waiting for that report to be actually presented to the House, coming into the Senate Chamber, unknown to the parties in interest, going before a committee of this body, and there procuring that committee to do—what? Not to bring in a bill, but here, on the very heel of the session, to come in with an amendment to a general appropriation bill. I do not know but that this can be done. I have been in the habit of believing, that if there is any enormity to be perpetrated, if there is any abominable outrage to be accomplished, if ever truth and justice are to be trampled under foot, it is done by way of amendment to some general appropriation bill towards the close of the session. Not that I would intimate, by any means, that the honorable members of the Committee on Naval Affairs would do anything that was not right and just, in regard to a matter of this sort. But, sir, I say that nothing is more dangerous than these *ex parte* inquiries. The best of men are liable to be imposed upon. I have a very high respect for the honorable members of these committees, but I denounce this attempt to filch money from the Treasury, as an outrage upon the rights of others, and a most abominable imposition on this Government. I believe that this Morton is a rank impostor—that there is no justice or truth in his pretended claim. I demand, in the name of justice and right, to have an opportunity to come before the Senate, and tell the story of the wrongs of the poor widow and defenceless children of Dr. Horace Wells—wrongs which they have suffered at the hands of this man Morton, who has attempted to rob their husband and father, who has descended to the grave, of a discovery which is one of the most extraordinary made in modern times. Sir, there is that family now in destitute circumstances, and I assert that the real discoverer is now in his grave. Will the Senate act upon this matter in this *ex parte* manner? Will they proceed to render judgment against the widow and the orphans, without hearing what they have to say for themselves? I shall ask to have an opportunity to be heard in defence of them.

Mr. BADGER. I know not, Mr President, what private griefs the honorable Senator from Connecticut, [Mr. SMITH] has; but certainly something or other seems to have stimulated him into a very undue excitement on this occasion, one not usual upon questions of this kind, and one which certainly that Senator is not in the habit of exhibiting in the Senate. The honorable Senator demands an opportunity of making out a case—for whom? For clients of his. Does he demand that we shall postpone this inquiry, in order that we may have another investigation at the next session? If so, that is one strong reason with me why we should promptly decide it now. I do not want to occupy two months out of three of the ensuing session with the investigation of these contradictory claims, which the honorable Senator desires to set up on this subject.

I shall vote for the amendment which has been recommended by two committees of this body. Of this man, Dr. Morton, I know little. I have seen him in this city, and that is all. About him, as an individual, I care nothing. But I am called upon here to determine whether I will vote for an appropriation to procure the surrender of a patent which he has obtained from the Government of the United States, for the use of what is, beyond all doubt, one of the most valuable bounties that has ever been bestowed upon mankind.

The honorable Senator talks about chloroform; but does he not know, that however valuable chloroform is, as an agent in these cases, it is at the same time, a dangerous one; and many who have gone to sleep with it to be relieved from the pain of an operation to be performed, have waked no more? whereas, I have it from surgeons of the highest respectability that, with regard to this particular agent, though it has been used in thousands of cases, there is not known an instance in which fatal or dangerous consequences have resulted from its use. That is what I understand. Of course, I cannot speak upon the subject from any knowledge of my own.

Dr. Morton has a patent for this invention. The honorable Senator from Connecticut says the subject-matter of the patent is not patentable. Upon that question I take issue with him; but this is not the place to decide it. The patent has been granted. The subject-matter patented is in daily use, and has been in use for years in the Army and Navy of the United States, to the great advantage of the surgical departments of those corps, and to the benefit and relief of poor sufferers who were compelled to be subject to surgical operations. It is used by the public generally. And now I ask, if it is becoming the Congress of the United States to say to this man, "We have granted you a patent; we use the discovery for which we have granted you that patent; but there are other people in the world who claim that they originally hit upon this idea, and therefore we will not pay you for the use of your invention?" This man has reduced it to practice; he has made it accessible to common and ordinary use.

But, it is said that Dr. Morton has not prosecuted those who have violated his patent. To me, this is no objection. It is no objection in my mind, that he has not discovered himself to be a litigious person, disposed to bring before the law every surgeon of the Army and Navy, and in private practice, who has used it for the relief of suffering humanity. Besides all that, I have practiced law too long not to know, that whoever goes to law, whatever else he may be, is no wise man; and that he who goes there, goes not for his own benefit, but for the benefit of clerks, sheriffs, and lawyers. I think, in that respect, therefore, he has acted as a wise and humane man.

I do not undertake to decide on this question, from information which I have derived from Dr. Morton. I never had any conversation with him upon the subject of the invention; I refused to have any conversation with him. I have refused to read anything which he has written upon the subject, but I rely upon information which I have received from impartial sources, and the unanimous report of the Committee on Military Affairs. Upon that I am willing to vote. We are taking no snap judgment upon any person—the clients of the Senator from Connecticut, or otherwise. We merely propose to purchase for the use of the public service, what we think is a valuable, or rather, I should say, an invaluable remedial agent.

Mr. GWIN. Mr. President, as I formerly belonged to the medical profession, I wish to endorse everything that has been said by my friend from Arkansas in regard to this valuable agent. I confess that I came to the examination of this question with extreme reluctance. I had been out of the profession for many years, and I attempted in every way I possibly could to throw it off; but, having been requested by those whom I could not disoblige, to look into it, I must acknowledge that this is one of the most important discoveries that has ever been made in the medical profession; and this gentleman being the patentee, I could look upon it in no other light than that, as we have availed ourselves of his property—for his patent is his property—we should in equity and justice recompense him for it. I came to this conclusion with reluctance; for I was very much disposed, without examination, to go against the claim. But having examined it, I could do nothing less than to add my testimony to that of the Senator from Arkansas, both of us having been in the medical profession.

Mr. SMITH. I want to ask a question of my friend from California. I want to know whether

Dr. Jackson or Dr. Wells had any notice of the application for a patent?

Mr. GWIN. I do not wish to go into any discussion of the law with regard to patents. My friend from North Carolina and the Senator from Connecticut can discuss it if they choose.

Mr. SHIELDS. The honorable Senator from Connecticut took occasion to make some remarks reflecting upon the conduct of the committee of which I have the honor to be chairman.

Mr. SMITH. I certainly did not intend anything of that sort.

Mr. SHIELDS. That disclaimer is satisfactory to me; but I beg to state how the matter came before the Committee on Military Affairs. The subject was investigated by a Select Committee of the House of Representatives, and I was informed that the claims which the honorable Senator from Connecticut says he represents, were examined before that committee, and that committee has reported. One of my colleagues in the House, [Mr. Bissell,] and a physician by profession—and permit me to say, not only an able physician, but as veracious a gentleman as any in Congress—assured me that after a full and fair inquiry, instituted by him and the residue of the committee, of which the late lamented Mr. Rantoul, who was a highly-educated and well informed man, was a member, and after all the claimants had been heard, and after an examination of the evidence, the committee had come to the unanimous conclusion, that Dr. Morton was the discoverer of this great remedial agent. It is a subject which I did not very well understand myself. The Committee on Military Affairs, therefore, committed it to the honorable Senator from Arkansas, who is a physician by profession, and who understands the whole subject. A professional gentleman of the other House, eminent in his profession, and a highly-educated man—a man of veracity and honor, assured me that the committee of that body had thus determined, after a full and fair inquiry.

It has been stated that this is one of the greatest discoveries of modern times. I believe it is. Of that, however, I only know this—that if this remedial agent had been known when the honorable Senator from Connecticut says he understood it was, it was unpardonable that its use was not applied to the American army in the late war with Mexico. It was criminal that it was not applied, if it was known, and it was wicked in that gentleman to withhold his information from the country on such an occasion as that; for, sir, I believe it would have saved thousands and thousands of lives.

Mr. CLEMENS. No doubt of it.

Mr. SHIELDS. Any man who witnessed the scenes which some of us were there called upon to witness, well knows that such an agent would have saved thousands of lives. Sir, thousands of our bravest and best men fell under the pains and afflictions that followed surgical operations. I have seen so much of that, that I was rejoiced to have an opportunity, when I found there was such an agent discovered, to give it my support in any way; and although I was not acquainted with the subject, I was happy to have it in my power to turn it over to the honorable Senator from Arkansas, who was acquainted with it. I venture to say that there is not a professional man in America or in Europe, who will not consider this the most beneficial discovery since the discovery of vaccination.

I cannot tell whether Dr. Morton is the discoverer or not; I know that those who have examined the subject thoroughly say that he is the discoverer. I have seen in addition, for he has shown it to me, the medal of one of the first medical institutions in the world—that of Paris—acknowledging, and in the name of France pronouncing him the discoverer of this agent, and that he had been able—for it was a good fortune on his part—to make a discovery which has been more beneficial to humanity, than any discovery made in the medical profession since the time of vaccination.

Mr. HALE. Mr. President, I am compelled to vote upon this proposition at this time. I must vote in favor of the amendment, notwithstanding the remarks which have been made by the honorable Senator from Connecticut. But I rise to suggest whether a question of this magnitude—one that is to result in the payment of such a large sum of money to the true discoverer, ought not to be postponed until the next session of Congress, in order that we may fully examine the subject?

Several Senators. Oh, no!

Mr. HALE. I am not anxious or solicitous about it, but it is known that there are other contestants for this discovery. I never heard, until within a very short time, that the individual who was suggested by the honorable Senator from Connecticut was seriously contesting for the honor; but I do know that there was a Dr. Jackson, of Boston, a man of high reputation, who did contest this claim with Dr. Morton.

Mr. JONES, of Iowa. Dr. Jackson was heard before the Committee of the House of Representatives, and his case was fully examined.

Mr. HALE. I understand that that committee agreed upon a report in favor of Dr. Morton. I have known Dr. Jackson for a long while, and Dr. Morton but a little while; but if I am compelled to vote upon the proposition now, with the evidence before me, I must vote in favor of Dr. Morton as being the individual entitled to the honor of this discovery. But I rose for the purpose of suggesting to those who have charge of this matter, that inasmuch as there are other contestants, it might be fair to postpone the subject until the next session.

Mr. SHIELDS. The honorable Senator will permit me to make one suggestion to him. As there may by possibility be another contestant—although I do not think, from what I have seen and heard, that any other has any claim, yet as these discoveries sometimes originate in the same minds about the same time, there may be one—I would suggest that the sum be reduced to $50,000.

Several Senators. Oh, no!

Mr. HALE. I am not one of those who object to the proposition on account of the amount of money. If this discovery really belongs to Dr. Morton, it is no more than right that we should pay for it; because, whatever may be the value of the patent right, it is such a discovery that he cannot enforce his patent rights. It seems to me that the Government of the United States, having granted a patent by their own officers, are estopped from denying its validity; and as the Government are making use of it in the Army and Navy so extensively, it seems to me but fair to compensate this gentleman.

I have been through the Massachusetts General Hospital, where this remedial agent was first introduced, and where it was tested. I went through all the wards and rooms of that hospital, and I saw every form of disease and suffering. I went into the dissecting room, and I confess my blood almost ran cold as I looked at the instruments of torture, as they appeared to me, which were about the room; but I was assured by the physicians attending upon that hospital that, by the use of this remedial agent, patients were insensible to the operation of these instruments of torture—that the effect of it was to make them go quietly to sleep; and that the most difficult and dangerous operations were performed there every day, without those on whom they were performed being sensible of them. That great hospital is one of the finest charities on the face of the earth; and by the operation of this agent the most revolting surgical operations are performed every day, while the patients are, as it were, in a deep sleep.

I do not believe there has been a greater con-

tribution made to the cause of humanity anywhere. I do not put this discovery second to vaccination, or anything else; and if the Senate are determined to vote upon it today, I hope they will make this appropriation; and with my present convictions, although I should be glad to postpone the subject until the next session, in order to avoid all danger of injustice, I must vote for this appropriation.

MR. DOUGLAS I shall occupy but a few moments as to the claim of Dr. Wells. I hold here a paper which has been laid on our tables, and which I understand to be an abstract of testimony taken in the House of Representatives. I find here two letters, which have passed between Dr. Morton and Dr. Wells, putting to rest the claim of Dr. Wells, brought forward by the Senator from Connecticut. When Dr. Morton made his discovery, as he alleges, he wrote to his old friend and partner, Dr. Wells, to this effect:

BOSTON, *October* 19, 1846.

FRIEND WELLS—Dear Sir: I write to inform you that I have discovered a preparation, by inhaling which, a person is thrown into sound sleep. The time required to produce sleep is only a few moments, and the time in which persons remain asleep can be regulated at pleasure. While in this state the severest surgical or dental operations may be performed, the patient not experiencing the slightest pain. I have perfected it, and am now about sending out agents to dispose of the right to use it. I will dispose of a right to an individual to use it in his own premises, or for a town, county, or State. My object in writing you is to know if you would not like to visit New York and the other cities, and dispose of rights upon shares. I have used the compound in more than one hundred and sixty cases in extracting teeth, and I have been invited to administer to patients in the Massachusetts General Hospital, and have succeeded in every case. The Professors, Warren and Hayward, have given me written certificates to this effect. I have administered it at the hospital in the presence of the students and physicians—the room for operations being as full as possible. For further particulars I will refer you to extracts from the daily journals of this city, which I forward to you.

Respectfully yours, WILLIAM T. G. MORTON.

Let us see what Dr. Wells said in reply:

HARTFORD, CONNECTICUT, *October* 20, 1846.

DR. MORTON—Dear Sir: Your letter dated yesterday, is just received, and I hasten to answer it, for fear you will adopt a method in disposing of your rights, which will defeat your object. Before you make any arrangements whatever, I wish to see you. I think I will be in Boston the first of next week—probably Monday night. If the operation of administering the gas is not attended with too much trouble, and will produce the effect you state, it will, undoubtedly, be a fortune to you, provided it is rightly managed. Yours, in haste, H. WELLS.

Now, upon the face of these two documents, I do not understand exactly how it is broadly asserted here that Dr. Wells is the inventor or discoverer of this remedial agent.

MR. SMITH. I know nothing about this paper. It was produced, it seems, before the committee of the House, and we do not know whether it is an authentic paper or not—whether it is a genuine letter or one that has been fabricated. I want to scrutinize the letter. I want to see how the signature looks.

MR. MALLORY. The Senator from Connecticut will allow me to put him right on that subject. The original letters can be produced to him in five minutes, if he desires to see them. It is understood that they are now in the hands of the committee of the House of Representatives, who examined this whole question.

MR. SMITH. I want all the papers before the committee of the House, and then I shall have Dr. Wells's case here.

MR. DOUGLAS. I shall not enter into this controversy, or allow my feelings to be excited at all. I thought it my duty to call the attention of the Senate to that testimony, because I saw that an impression was about to be produced on the minds of the Senate which seemed to be contradicted by the testimony in the case. I know nothing of Dr. Morton. I believe I have seen him once or twice this winter, and that is all I know of him. I confess that before I examined the matter my prejudices were against his claim, until my colleague in the other House, [MR. BISSELL,] who is a regularly-educated physician, a man of great intelligence, and has had practice as a physician, took it up, and as chairman of that Select Committee gave it a thorough investigation. This report produced entire conviction upon my mind that Dr. Morton was entitled to the credit of this discovery.

I do not mean, nor does that report mean, that he discovered sulphuric ether, or that he was the first man that ever administered sulphuric ether, but simply that he discovered the application of sulphuric ether with reference to destroying pain in surgical operations, and that he discovered it to a degree and extent in which it had not before been administered, and in which it was supposed, was not safe to administer it. He risked his own life by experiments upon his own person; and then he administered it to other persons and ran the risk of a prosecution for malpractice in the event that it should fail. I became satisfied from the testimony that he alone made the experiments, and he alone introduced it to the public; that he introduced it first into the general hospital of Massachusetts, and from there to the world; that he took the entire, sole, and exclusive responsibility of the use and introduction of this agent, until its entire success had been established.

I also find from the report, that while these experiments were going on—while it was doubtful whether they would prove successful—Dr. Jackson was ridiculing and denouncing Dr. Morton as a reckless man, who was hazarding the life of his patients by administering this agent to them, and that he never set up his claim, although experiments were being made in the immediate vicinity of his own house, until after those experiments had proven successful, and the judgment of the world was about to be pronounced in favor of Dr. Morton, and of this invention that had been made by him.

I find this in the report of the committee of the House of Representatives, and I understand that both parties were represented before that committee. Taking, then, the report of that committee, before whom both parties were represented in person, and by their counsel, where testimony was adduced, and taking that report in connection with the judgment of the general hospital of Massachusetts, where the first experiments were made, and taking all the testimony together, I cannot doubt that the credit is solely due to Dr. Morton.

In regard to Dr. Morton's previous standing, I have but little to say. It is true, I suppose, that he is not a man of that scientific attainment that could be justly claimed for Dr. Jackson; but it is also true, that the greatest discoveries and inventions have not been made by men of science. Even the very greatest discoveries have been made by plain men, whose position in society before was of the humblest order; and the mere fact that one is a man of science, and the other is not, is not evidence to repel the discovery from being made by the humble man. I understand that Dr. Morton was a dentist, and Dr. Jackson was an eminent physician and man of science; but I do not see one iota of testimony to show that Dr. Jackson had anything to do with this discovery. On the contrary, his denunciation of Dr. Morton, while the latter was making experiments, is conclusive against him. If you strip Dr. Jackson of the one fact of his having a high reputation as a man of science, there is no more to connect him with this discovery, so far as I have been able to ascertain, than any other man in America. He relies wholly upon his reputation as a man of science.

MR. DAWSON. I wish to state to the honorable Senator that there never has been any report made in the House of Representatives on this subject. The report which has been published is outside of the House. It has not yet been made to the House, unless it has been today. I believe the committee stood four to one, and not unanimous, as my friend from Illinois says. The mi-

nority of the committee has not yet had a chance to report. There are three claimants to this discovery, and the whole of the facts are not yet known to the House of Representatives.

MR. DOUGLAS. I have but one word to say about that. I am informed that the report has been formally made today. The facts, as I understand, are these: That committee sat very long. Witnesses have been called before them. Both parties have been represented. The committee have given it a full, fair, and even a tedious examination, and have arrived at a conclusion in favor of Dr. Morton; but under the rules of the House, committees have not been called for reports for a long while, and the report which the committee had agreed upon has been published in advance of its being formally presented; but I have been informed that today reports have been formally made. But this is a matter of form. It does not reach the question or invalidate the testimony before that committee. I am speaking of the testimony, as laid before the world under such circumstances as justify us in the belief that it is reliable testimony. But I will not occupy time in discussion. I deemed this much due to the occasion.

MR. BRADBURY. I shall occupy the attention of the Senate but a few moments. I can assure the Senate that I would not say a word were it not that I believe, by adopting the amendment, we should do injustice to other persons.

At the close of the session, we are called upon suddenly to determine a scientific question—to decide upon the merits of a great discovery in an appropriation bill; and an amendment has been brought in by a committee who, if I understand the facts, have not had the subject referred to them. I would like to inquire of the chairman of the Committee on Military Affairs if the subject was ever committed to that committee by the Senate? What a spectacle, then, do we present? Without any notice, so far as honorable Senators are concerned, that the subject was to come up here—without anything being done to give the committee jurisdiction of the subject, they make a report. In answer to that report, it is sufficient to say, that there was nothing to give notice to others that they were to make it. Now, I ask, are we in a condition to determine this question? Are we a suitable body to decide it? Believing that there is merit in the discovery, and that it will be proper to reward some one, I would be willing to institute a tribunal, and let that tribunal notify the claimants, Dr. Morton, Dr. Jackson, and the friends of Dr. Wells—let that tribunal hear testimony, and make their award. And I suggest whether it would not be satisfactory to the friends of Dr. Morton to authorize the President to appoint some two or three distinguished scientific men, who should be disinterested, and who should hear the parties, and determine the merits of their respective claims. I do not know enough about this matter to determine either for or against Dr. Morton. I should certainly be very reluctant to do him any wrong; and if he can establish the facts which he claims, there is a better tribunal than a committee of Congress which we can provide. We know that when we undertake to investigate matters here, the investigation is necessarily imperfect, and especially when we are left to decide upon *ex parte* testimony, and evidence that is necessarily unsatisfactory.

Now, with regard to such a great question as this, involving not simply dollars and cents, but in which the character and reputation of individuals are at stake, we should be careful to make a correct and accurate investigation.

It is said that Dr. Morton has an assignment of the interest of Dr. Jackson. Will the Senate, in determining this case, regard Dr. Jackson as precluded, because he, in consideration of "one dollar to" him "in hand paid," transferred his interest in the patent to Dr. Morton? Why, if that was to be regarded, it would assuredly be evidence that he did not expect that Dr. Morton was to obtain national honors and national rewards, but that he preferred that it should go free to the world.

I am not prepared to decide this question, and one reason is, because I find a document which has been placed upon my table, signed by between one and two hundred of the most distinguished physicians in Boston, and its immediate vicinity, in the vicinity of both claimants, who give it as their opinion that Dr. Jackson is entitled to the credit of the discovery. I know not whether they are right or wrong; but I know many of these gentlemen to be men eminent for their standing and eminent for their skill in their profession, and they certainly have had a better opportunity of determining this question than we have. They have determined in favor of Dr. Jackson.

If a proposition were now presented to reward Dr. Jackson, I should vote against it, as I shall against the proposition to reward Dr. Morton; because I believe we are not now competent to decide the question, and that we can provide a better tribunal, and that we should be doing great wrong to attempt to decide this question at this period, in such haste as we must decide it, if we decide it at all. If we were to undertake to give a snap judgment now, would it be regarded, in the judgment of the world, as carrying that sanction which a deliberate vote in the Senate ought to carry with it? If it is known that the subject was introduced here on *ex parte* evidence, so far as the committee of the Senate are concerned, and that we arrived at our decision in haste, at the close of a session, on an appropriation bill, would it be regarded as of much weight? Why, Dr. Morton, if he has the proof, which his friends believe he has, to substantiate his claim, ought not to desire our decision now; because, under these circumstances, it would not carry that weight which a decision in favor of the true discoverer should carry. Nothing can be lost by delaying this matter; or if the friends of Dr. Morton prefer, I would suggest that we appropriate this sum, and authorize the President to appoint three distinguished scientific men from civil life, who shall notify the respective claimants, hear them, and decide upon the merits of their claims. If the friends of Dr. Morton feel confidence, would that not be a mode in which they could be sure of a decision in their favor? And if they refuse, what other judgment can we form than that they are disinclined to stand up to the test which such a tribunal would afford? A Senator near me says, it would postpone the matter. We need not postpone it. We can make the appropriation, and we can authorize the President to appoint the board; and let that board determine, and upon their decision, let the money be paid; so that it is not a postponement. I present this as a test, whether the friends of the amendment are willing to have the claim submitted to the scrutiny which such a board would give.

MR. WALKER. Mr. President, I will ask the attention of the Senate for a very few moments. I profess to be one who has looked into this matter from its foundation to its capstone. I have read everything that has been printed; everything that is extant on the part of both parties; and I believe everything which they have in manuscript; but before I proceed to that, I wish to make a few observations in reply to the concluding remarks of the Senator from Maine, [MR. BRADBURY.]

The Senator from Maine proposes that we shall postpone this matter; that we shall suffer a commission to be instituted to decide between these claims, and that thereby we shall avoid taking the friends of the other claimants by surprise—thereby avoid taking a snap judgment upon them. If the world has not had time enough to bestow its attention on this matter, pray, how long will it require to do it? This discovery was demonstrat-

ed to mankind on the 30th of September, 1846. It is now almost that same month in 1852. It is almost six years since it was first demonstrated. Has anybody been taken by snap judgment? Let us look at what has been done.

After Dr. Morton had administered this anaesthetic agent in his dental establishment, he immediately resorted to the Massachusetts General Hospital. He got the consent of such men as Dr Warren, Dr. Hayward, and Dr. Bigelow, that he might there administer it in a capital operation. That operation was performed on the 16th of Oct., 1846. Again he performed an operation on the 17th of October, and so he continued down to the 2d January, 1847, when these surgeons say was the first they ever heard of the claim of Dr. Jackson. The most distinguished medical men in America swear and certify to this. But this is not all. This matter underwent a serious and candid investigation before the medical men, the surgeons, and trustees of that institution, and they came solemnly to the conclusion, first, that Dr Jackson had never made any discovery in regard to ether which had not been known long before. Second, that Dr. Morton did, in 1846, manifest, and make plain, and publish to the world, that sulphuric ether, administered in proper quantities and in a proper manner, would produce entire insensibility to any operation. They also decided most solemnly against the claims of Dr. Wells Not only is that so, but we have here under the hand of Dr. Wells, an acknowledgment that the discovery was Dr. Morton's. Dr. Wells not merely acknowledged it to be Dr. Morton's discovery, but gave him advice about it, and said it would be a fortune to him if he managed it rightly.

Did the General Hospital of Massachusetts stop there? No, sir. Dr. Jackson came forward before those great men, and expressed his dissatisfaction at the decision which they had made. He prayed that they might review their decision, and at his request they did review it, one year afterwards, and came solemnly again to the decision to which they had previously come. This was in Boston, where the parties lived. This decision was arrived at by the most scientific men of the continent of America, if not of the world. They reviewed their decision; had the claims again laid before them, and came again, solemnly, to the same conclusion.

In the meantime, however, and while Dr. Jackson was denouncing Dr. Morton as a "reckless" man, as one who had made no discovery whatever, and who would kill somebody if he did not stop his experiments, wrote a letter to M. Elie de Beaumont, of the Academy of Arts and Sciences of Paris. That letter was sent under secret seal, and it was dated November 13, 1846, just at the very time when he was denouncing Dr. Morton as a reckless wretch who would kill somebody. He sent that letter, with a request that it should not be opened until he gave further information in regard to it. The investigation went on before these daring men of the Massachusetts General Hospital, and by Dr. Morton, no less daring, until the 24 of November, 1846; and in this country, Dr. Jackson was never heard of as claiming the discovery before that time. In December, 1846, he wrote another letter requesting M. De Beaumont to open the sealed package. He opened it and read it, and, on the spur of the occasion, M Velpeau answered it with a sneer, and said:

"The secret contained in the note which has been read is no longer a secret; the medical journals published in America and England have divulged it in the months of November and December. A letter from Dr. Warren, of Boston, communicated the information to me more than one month ago; and Dr. Willis Fisher, of the same city, proposed that I should try its effects at La Charité towards the middle of last December.

That letter of Dr. Jackson's was thus answered by a no less distinguished man than M. Velpeau, before the Academy of Arts and Sciences in Paris. But this secret letter had a fatal effect—an effect which I am sure the Academy of Arts and Sciences never ceased to regret. What did it do? It procured, upon the excitement of the moment, a decision of the Academy of Arts and Sciences of France, awarding to Dr. Jackson twenty-five hundred francs, being one of the Monthyon prizes of that institution, and he received the money. But when the good Dr. Warren, and Dr. Hayward, and Dr. Bigelow, and others of the Massachusetts General Hospital, who knew all about it, placed this persecuted man, Dr. Morton, before the world, and established his claim, what did the Academy of Arts and Sciences do? We know it is the nature of that institution never to take back anything which it does. It will not acknowledge fallibility; but it went to the extent to which it could go. It awarded to Dr. Morton another prize of the Monthyon foundation, of twenty-five hundred francs—as what? Just for what Fulton was, just for what Jenner, the discover of vaccination, was, and for what all other men are, who come before the world making discoveries. The Academy of Arts and Sciences gave him this Monthyon prize, for being the man who had discovered, and made beneficial to the world, the use of sulphuric ether as an anaesthetic agent.

Notwithstanding that Dr. Morton had to fight the medical and literary magazines of the country —notwithstanding he had to fight Dr. Jackson, and almost everybody else—for nearly all the surgeons in the country, except those in the Massachusetts General Hospital, frowned upon him—notwithstanding all this reduced him to poverty; yet, like a noble man, as he is, he declined to receive the two thousand five hundred francs in money. Still, so anxious was the Academy of Arts and Sciences to place in his hands evidences of their exalted recognition of his rights, that they directed a certain portion of the fund to be paid in the shape of their largest gold medal. That did not exhaust the entire fund, and the friends of Dr. Morton in France took the balance of it, and used it in inclosing the medal in a beautiful gold frame, so that it altogether now presents the beautiful thing which I hold in my hand, [exhibiting it to the Senate.] Dr. Morton would not receive the money, but he received that which he could treasure in his heart, and could look upon as an evidence of the appreciation of his exertions by this noble Academy of Arts and Sciences of Paris. It is a noble appreciation of him who gave this invaluable discovery to the world. It shows whom they considered as the real discoverer.

When you come to look at the testimony on which the claims of Dr. Jackson is based; when you come to inquire really what it is, it would seem most astounding that any one in the world should come forward with such a claim. What was it? At first he claimed nothing more than that he had told Dr. Morton that ether could be taken safely into the lungs. Anybody in the world could have told him that. This substance had been known since the thirteenth century. Its formation was accurately described by Vaserius Cordus, in the sixteenth century. Frobenius first designated it ether, and published an account of it in the philosophical transactions in 1730. Its use as a medical agent, first alluded to by Valerius Cordus, and mentioned by Hoffman, Cullen, Alston, Lewis, and Monroe, and other writers of the last century, has long been familiarly known. The history of its use by inhalation, commenced with the pamphlet published in 1795, by Richard Pearson; and several communications from the same Dr. Pearson are to be found in the work of Dr. Beddoes on Factitious Airs, published at Bristol, England, in 1796. The same work contains a letter from one of Dr. Thornton's patients, giving an account of his use of ether, by Dr. Thornton's advice, in a case of pectorial catarrh. He says, "it gave almost immediate relief both to the oppression and pain in the chest." On the second trial, he inhaled two spoonfuls, with "immediate relief, as before, and I very soon after fell asleep." In 1813, Nysten, in the Directory of Medical Sciences, speaks of the inhalation of ether as familiarly known for *mitigating pains* in colic. For the last fifty years, most therapeutic authors mention its use by inhalation in asthma, &c., as Duncan, Murray, Brande, Christison, Pereira, Thompson, Barbier, Wendt, Vogt, Sundelin, &c. Effects analogous to intoxication, when ether is inhaled, are stated by American authors, as Godman, (1825,) Mitchell, (1839,) Professor Samuel Jackson, (1838,) Wood & Bache, (1839,) Miller, (1846, and early in that year.)

Dr. John C. Warren, in his work on Etherization, says: "The general properties of ether have been known for more than a century, and the effect of its inhalation, in producing exhilaration and insensibility, has been understood for many years, not only by the scientific, but by young men in colleges and schools, and in the shop of the apothecary, who have frequently employed it for these purposes."

From the days of Hippocrates down, there has been an effort to obtain an anaesthetic agent—something to lull the patient in surgical operations. But until Dr. Morton, with what physicians termed a daring spirit, came forward and demonstrated it to the world, the right agent had never been found. There is among the testimony, the certificate of the person on whom the agent was first employed. Dr. Morton first extracted teeth in this way. He then went to Dr. Warren, and got him to consent to perform a surgical operation upon a patient, rendered insensible by this agent, which he did perform on the 16th of October 1846. Dr. Morton repeated his experiments in surgical operations at the hospital, on the 17th of October and continually from that day down to the 2d of January 1847, when Dr. Jackson first made known that he ever had any claim.

The trustees of the general hospital of Massachusetts, as a testimonial of the services of Dr. Morton, raised a fund of $1000; but knowing his sensitiveness on the subject, and in order to make the compliment more acceptable to him, that there might remain something connected with it as an enduring monument of their gratitude, they enclosed the amount in a silver casket, containing an engraving manifesting their fourth decision, as you may say, in his favor.

Again, as another testimonial, I may state that the subject was brought up in the Thirtieth Congress before a select committee of the House of Representatives, and with all the testimony before them, they decided that Dr Morton was the discoverer. Here, again, in this Congress, after another review of all the testimony, Dr. Morton appearing before them in person, and Dr. Jackson, both in person and by counsel, a select committee of the House of Representatives has decided Dr. Morton to be the discoverer.

All that there is now to answer against his claim, is the remonstrance to which the Senator from Maine has alluded; and what is that remonstrance? It is a remonstrance said to be signed by one hundred and forty-four physicians. The register of physicians of Massachusetts, shows that there are about fifteen hundred in that State. Not one of these remonstrators was in the general hospital of Massachusetts at the time this discovery was brought out; but on the contrary, a great many of them are dentists, who were personal enemies and personal rivals of Dr. Morton, and they are to this day his personal rivals. At the time he was risking his life to bring out this discovery, they were denouncing him, and endeavoring to put him down. They were getting up prosecutions against him, to drive him, if possible, from respectable society. Yet these are the men who come forward and remonstrate! But, is it true, as the remonstrance states, that it is from "Boston and its vicinity?" I have here the State record of Massachusetts, and I find that the names on that remonstrance are scattered all over the State. There are three hundred medical men in Boston alone, and here are one hundred and forty-four remonstrants from the whole State of Massachusetts, and these are Dr. Morton's rivals—men who had first given him notes, and then refused to pay them, and became his enemies, and tried to make out that he had made no discovery! The remonstrance is dated in February last, and they have been ransacking the State of Massachusetts from that time to this, to get up remonstrators against Dr. Morton, and they have succeded in getting one hundred and forty-four out of fifteen hundred in that State.

We have two reports of the hospital of Massachusetts: we have the prize awarded by the Academy of Arts and Sciences of Paris; we have the award of a casket and $1000 by the trustees of the Massachusetts hospital: we have the reports of two select committees of the House of Representatives; we have the concurrent voice of two committees—the Committee on Military Affairs and the Committee on Naval Affairs—of this body; and there is nothing to answer it but this simple remonstrance of which we have heard today. We have nothing in an authentic shape to controvert all these testimonials. Most of these remonstrants do not state that they know anything about the facts but simply give their "belief." Why not go to Dr. Warren, Dr. Hayward, or Dr. Bigelow? Why not go to the various men who cut off legs and arms, and extirpated tumors, and performed the most dreadful surgical operations with the aid of this agent, when Dr. Morton was making his first experiments? Why did not Dr. Jackson do that? Why did he not bring the names of some surgeons to certify that he discovered this? He could not do it.

These awards to Dr. Morton, the concurrent testimony of all these individuals, speak a voice in America and Europe, and now it is even heard in Asia. But why do we get up a controversy here about the real discoverer of this remedial agent? I have in my possession the original patent, in which it is expressly recited that Dr. Jackson has assigned all his interest in the matter. How did he get any interest? It was through the mistake of the lawyer who was employed in regard to obtaining a patent. Dr. Jackson went to him, and finding him employed in endeavoring to obtain a patent, observed that he had something to do with that matter. The lawyer asked him what he had to do with it. "Why, I told Dr. Morton that ether could be administered with safety." Everybody knew that before. But did he know that pain could be destroyed under its administration? No, sir. He does not attempt to prove it. But let anybody read the review by both select committees of the House of Representatives, of the testimony by which he undertakes to prove it; and if they could ever thereafter believe his witnesses, it is more than I could do. There is not one particle of testimony given, to prove that Dr. Jackson ever said or ever supposed that ether could be so administered as to annihilate pain. All that Dr Morton wanted to know, in order to be sure, was, that he was not running the risk of murder. Dr. Jackson said it could be administered with safety. He told the patent lawyer that he had something to do with it—that he had given this information to Dr. Morton; and then that lawyer, Mr. Eddy, through a mistake, not knowing the facts, proposed that Dr. Jackson should have some remuneration. What do you think Dr. Jackson was content with, in the first instance? Did he claim any part of this discovery? At the suggestion of a friend, I will give way to the Senator from Louisiana for an explanation.

MR. SOULE. Mr. President, the amendment proposed by the honorable Senator from Arkansas, [MR. BORLAND,] meets with my hearty concurrence, and has the sanction of my judgment. I will most cheerfully give it my support. But I must express my surprise and concern at the course of the debate it has given rise to. I dissent, emphatically, from the opinion which honorable Senators have expressed, of the character of the connection in which Dr. Jackson stands to the discovery sought to be so liberally noted and rewarded through the amendment on your table. I am free to acknowledge, and admit, unhesitatingly, that by far the largest share in bringing that discovery to practical results, and in endowing the world with the secret of the wonderful power which the inhalation of ether had to abstract sensibility from the patient, in those cases where the acuteness and intensity of their sensibility rendered the skill of the physician timid, and at times utterly powerless, belongs to Dr. Morton. For this, I am willing that he be made the recipient of the bounty provided for in the amendment. But while I am thus favorably disposed towards Dr. Morton for his agency in introducing that great principle into practice, and constituting it one of the main levers of all essential surgical labors, I cannot disown the claims of science, disregard its titles to the initiatory experiments that brought it out, and stamp them with reprobation. The name of Dr. Jackson will forever remain associated with this discovery. It is too strikingly salient, in the very testimonials adduced by the friends of the measure, to be thus blotted out of the record which attests its relations to the workings that preceded and prepared the transformation of the theoretical appreciation into an efficient formula; and fearing that an unqualified vote on the amendment before me might do his claims injustice, I could do no less than to rise and to enter my protest against his being prejudiced by any action of ours, in any right he may have to become a participant in the generosities of this Government. Sir, the benefits which this invention has conferred on suffering humanity, are large enough to justify a bestowal of our favor upon all those who may have been instrumental in bringing it about. The connection of Dr. Jackson with the discovery needs no better proof than the very letter of the patent under which the claims of Dr. Morton to this bounty are pressed. Dr. Morton certainly cannot impeach this evidence; and if it means anything, it establishes beyond doubt, in Dr. Jackson, not only an interest, but in some sort, a preëminence of interest in the thing discovered. For the question I take it, is not in whom resides the proprietary right to the patent, but to whom belongs the merit of the invention. The appropriation provided for in the amendment, if I understand it aright, is not meant as the purchase price of the patent, but as an encouragement, or rather a national reward tendered to the discoverer in grateful acknowledgment of the boon he has conferred on humanity; and, sir, while we thus sanction, with the seal of our commendations and liberality, the merits of this heavenly invention, let us be mindful that we do no injustice to any one who may have participated in it. Sir, the claimants have chosen to lay their respective pretensions before the best, and certainly the highest forum in which they could be investigated and adjudged. They have plead their cause before the French Academy of Arts and Sciences, than which no other body of men is more qualified to pronounce on such a contest. They have had a trial, and a verdict has been returned, and they should not be permitted to question either the authority of the tribunal, or the rectitude of the award, particularly as they both claim under them. Here is the report made by that illustrious scientific body through one of its most renowned members, Mr. Bovier, speaking as the organ of the commission appointed to investigate the rights of the parties, and to decide between them:

"A prize of 300 francs is allowed to Dr. Jackson for his observations and experiments on the anaesthetic effects produced by the inhalation of ether.

"And a prize of the same value is allowed to Dr. Morton, for having introduced it as a system in chirurgical practice, upon the indications of Dr. Jackson.

"In this case two distinct things are to be noted, born of each other, one of which belongs to Dr. Jackson, and the other to Dr. Morton. Dr. Jackson had observed that individuals who, for a time, had been subjected to the action of ethereal vapors, were momentarily deprived of all sensibility. There is the physiological fact, as verified by Dr. Jackson himself. After this, Dr. Morton succeeded several times in extracting teeth from persons previously subjected to the inhalation of ether." * * * * "Mr. Jackson and Mr. Morton were necessary to each other. Without the insistency, the prepossession, the courage, not to say the audacity of the latter, Dr. Jackson's observation might have remained long unapplied; and without the facts observed by Dr. Morton, Dr Jacksons idea might have been sterile and ineffectual."

Such is the enlightened judgment which the ablest body of scientific men now living has passed upon the respective claims of these two individuals. If I had any right to venture an advice in so grave a matter, I would respectfully suggest that we do not so impart our favors and bounties upon the claimant before us, as to shut our door on those who may have as good a right as he to partake in them. After these hasty remarks, and under the reservations which I have expressed, I shall give my vote in favor of the amendment.

MR. WALKER. The Senator from Louisiana has given a most impartial statement in regard to this matter, one such as might be expected from that Senator, in taking an upright and just view. Upon the subject of that report which he has read, I have this to say: that Dr. Morton denies that he ever knew that the Academy of Arts and Sciences had the matter under examination at all, when they made their first report; and this was the reason why he refused the specific award of money. But this does not appear from the book which the honorable Senator has read; and therefore he has stated the facts as he understands them.

Before the exlpanation of the Senator from Louisiana, I was about to ask the question: What was it supposed that Dr. Jackson asked for his interest in this matter in the first instance? He first made the suggestion to Mr. Eddy. Mr. Eddy thought that Dr Morton ought to make some credit, or do something; and all Dr. Jackson then asked was $500 for medical advice; and, according to his own language, he went home and charged Dr. Morton upon his books $500 for medical advice; and Dr. Morton executed a bond to pay Dr Jackson $500, provided 10 per cent. upon the patent would make that sum. He subsequently claimed ten per cent. upon the patent; and then claimed twenty-five per cent.; and ultimately claimed that he was the real discoverer of the whole. But, however that may be, whatever straits Dr. Morton may have been in, I say, here is the patent in the name of Dr. Morton, and in it Dr. Jackson surrenders any title he could by possibility have. But, whatever Dr. Jackson may be able to show hereafter that he is entitled to, I shall be willing to grant to him.

I must make this further remark: Dr. Morton has been pursued in every step he has taken in this matter. It is in evidence before the committee of the House of Representatives, and they have reported the fact, that there were raised in England at one time by subscription £10,-000, for the discoverer of the anaesthetic properties of ether, and the payment of it to Dr. Morton was prevented by the agitation raised by Dr. Jackson. Dr. Morton has been pursued by people hunting on his track. They are still following him. Here they are, now, pursuing him through the mouth of the Senator from Connecticut. But I do not blame him for making any representations he may see proper in regard to Dr. Wells; but I say that the original claim of Dr. Wells is altogether refuted by his own evidence, and by his own advice to Dr. Morton.

Then, taking all these public monuments, as you may call them, as evidence of the right of Dr. Morton, running from 1846 to 1852, how can it be possibly said that we are taking a snap judgment on anybody? It cannot be truly said. This subject has been long considered, and the judgment of the world has been in favor of Dr. Morton's rights. But here is the patent, and here he is the assignee of any rights that Dr. Jackson may have had.

A proposition now comes up from the Committee on Military Affairs to procure a surrender of that patent; and for what reason is that opposed? Why, that by paying this, we may do something wrong to some other individual. Sir, the patent has been granted at the Patent Office. That is the tribunal established by the Constitution and the laws to decide to whom a patent is due. That institution did decide the patent to be due to Dr Morton, and it was issued to him, and any rights which Dr. Jackson had in it are recited in the patent as being assigned to Dr. Morton. Then he (Dr. Jackson) can have no claims. But it is not pretended that Dr. Jackson or Dr. Wells have got a patent. It is known that they did not get any. Dr. Morton has the patent, and this appropriation is proposed for the purpose of obtaining the surrender of that patent.

MR. MANGUM. Mr. President, I have perhaps been more happy this evening than you have been. The Army appropriation bill was taken up this morning, and I went home to get my dinner, knowing that the Senate would be amused and interested in the meanwhile by a beautiful, brilliant and magnificent dialectical exhibition. I happened to come in just at the moment when it was in its full glow and brightness and beauty. I do not know what subject is before the Senate; nor, from what I have heard, do I deem it material to know. [Laughter.] I think I can speak just as well upon it, as most gentlemen without knowing anything about it. But this I will say, I am utterly opposed to anything and everything which has not been regularly considered by the appropriate committee.

MR. BORLAND. The Senator will permit me to say that this is not only recommended by one of the regular committees of this body, but by two of them, and by two of the Departments of the Government besides.

MR. MANGUM. As to the Government, I do not believe much in that, [laughter;] but as to the committees, I suppose they are about right, particularly since they have been appointed by the Presiding Officer of the body. As I said, I think from what I have heard here, that I can speak just as well on the subject, without knowing anything about it, as most gentlemen. If this matter has come up as an amendment, without being recommended by the appropriate committee, it would be better at this period of the session not to entertain it. I suppose three or four hours longer would give a full opportunity for gentlemen to give a brillian and magnificent exhibition of their dialectical qualities; but they must remember that our session is to terminate soon. I hope we will put aside all things that are not regularly in the bill. The public business ought to be done, and done promptly. I must however do the members of this body the credit to say that their speaking power is beyond the physical power of all the giants of all ages of the world. For myself, I speak less than any man in this body, who pretends to speak at all. I have occupied less than four hours during this session; and yet, under ordinary circumstances, I would say a few words. But we have General Scott to elect, and I think these questions had all better be postponed till after that period. I am against these propositions, unless they are part of the original bill. I wish to know of the Chair, if the proposition pending is a part of the bill?

THE PRESIDENT. The amendment pending is one recommended by the Committee on Military Affairs.

MR. MANGUM. I think that at this time we ought not to take up these extraneous matters. We have a great deal to do this fall, and we had better go home and do it. This mode of doing business reminds me of a story I heard of a tigress that crouched by the side of a little path leading to a spring, and when persons went to the spring to get water, the tigress would pounce upon them. This is the way that these subjects are brought upon us at the close of the session. When we imagine that we are all safe, something is pounced upon us which leads to several hours of discussion.

Sir, I go for those things which come through the regular way, and I deeply suspect everything that comes in indirectly. I have been here a long while. I have seen upon the last nights of every session more enormities committed upon the public interests than during the first four, or five, or six months of a session. I am against it as an old man, and I never tolerated it when I was a young man. I do not want to stop gentlemen's dialectical exhibitions. I hope they will be brilliant and beautiful in tone, and this brilliancy and beauty will make up for a deficiency in the solidity of matter. But I hope gentlemen will allow us to come to a vote, and get through with this bill.

MR. TOUCEY. Mr President, there is a petition in behalf of the widow and children of Dr Horace Wells, now deceased, claiming him to be the author of this discovery. That petition is in the hands of my colleague to be presented to this body. It claims for Dr Wells the whole merit of the discovery, and his widow and children consider themselves entitled to the benefit of any bounty which Congress may see fit to bestow. While the Army appropriation bill is under consideration, without a hearing—without an opportunity of being heard—an attempt is made to forestall that question, and to decide it by granting this money to Dr Morton. If the widow and children of Dr Wells can have an opportunity to lay the evidence in their possession before a committee of this body, it will prove that in the year 1844, this discovery was made by Dr Wells, of the city of Hartford, and practiced extensively by him, and by the physicians of my State. I myself have seen the testimony of most of the respectable physicians and surgeons of the city of Hartford, setting forth that fact, and the testimony of a thousand witnesses, proving that this discovery was then made, and was communicated to a medical journal. Dr Morton was a pupil of Dr Wells, and afterwards a partner of Dr Wells, as a dentist. In the year 1844, Dr Wells made this discovery. The discovery is that by the application of a class of agents, insensibility to pain under surgical operations may be induced. That class of agents is somewhat numerous. One is the nitrous oxyd gas; another is rectified sulphuric ether; and there are others that have been resorted to. But the discovery is of the effect that, by the application of any one of these agents, insensibility to pain under surgical operations may be superinduced. I say, sir, that it can be proved—I know it can be proved by incontestable evidence, for I reside in that vicinity—by testimony that cannot be resisted, that this discovery was made, and was well known and was introduced into practice not only with the nitrous oxyd gas, but with the sulphuric ether, and it was carried to the extent of amputating a limb, as well as performing other surgical operations.

MR. BROOKE. I wish to ask the Senator from Connecticut a question. If this matter was discovered by Dr Wells, why was it that he wrote the letter to Dr Morton, which has been read by the honorable Senator from Illinois, [MR. DOUGLAS?]

MR. TOUCEY. I will answer that question. Dr Morton and Dr Jackson, two gentlemen of Boston, combined together, after the discoverer had been there, and had disclosed it to them, and came to the Patent Office, and took their oaths, by which they swore that they themselves were the joint discoverers of a certain compound, if I may use the term, which they called "letheon," which would produce this effect, and it was in respect to that that the letter was written. But I would ask the honorable Senator whether he is disposed to try the question, and pass upon it on one little particle of evidence on one side, without listening to the proof of the other party? I say here now, that it is the universal opinion of medical men—physicians and surgeons—in the city where I reside, and where Dr. Wells resided, that he was the discoverer of this effect, and reduced it to practice. After he had made the discovery, he went to Boston, and completed it there; and in addition to that, the result of the discovery was communicated to a medical journal, in Boston, in the year 1845, and there it is now. Probably Dr. Jackson and Dr. Morton derived their in-

formation from that medical journal. Dr. Morton was the pupil of Dr. Wells, and came to the house of his former partner. He was there present while Dr. Wells was reducing to practice this great discovery of modern times.

I do not, here in my place, and upon my responsibility as a member of this body, undertake to present to the Senate the merits of this controversy between these three men; but I come here and ask that a citizen of this country—that the widow and children of a citizen of this country—may have an opportunity to be heard before the money is paid which is proposed to be paid by the Government for this great discovery. To show that this claim is entitled to consideration, I will state the fact, that the Legislature of the State of Connecticut, years ago, took this subject into consideration, and adopted a joint resolution, awarding the honor of this discovery to Dr. Wells; and I will state further, that after obtaining testimony Dr. Wells resorted to Paris, and presented to the Institute of France the evidence that he had made this discovery. I believe that they have awarded to him the honor of it, but I will not state that as a fact positively of my knowledge. I have, however, been so informed, and I believe it to be true.

What I would submit to the Senate is this: If this Government is about to appropriate $100,000 to the person who is entitled to the merit of this great discovery—I mean the application of a class of agents to produce insensibility to pain under surgical operations—let the parties have an opportunity to be heard; and when the petition of Mrs. Wells is presented to this body, let it go to the committee, and let the parties be heard. But here the subject is brought up upon the military bill, and before the committee of the other House has reported upon the subject.

Mr. BROOKE. I wish to ask the Senator if he is aware that the claim of Dr. Wells, and the evidence supporting his claim, was laid before the committee of the other House, and fully examined before they made this report.

Mr. TOUCEY. I think it is not so.

Mr. BROOKE. I assert it to be the *fact*, that the claim of Dr. Wells was examined.

Mr. TOUCEY. It is not noticed in the report. There is one little extract given, but the evidence in support of the claim of Dr. Wells is not presented in that report. The report is signed merely by a majority of the committee of the other House, and the minority report has not been handed in. What then? The widow and the children of Dr. Wells accidentally heard of it, and they sent in the affidavits they had on hand; but they have not been examined; they have had neither witnesses nor counsel; and now my colleague has their petition. If it is a matter of competition between these claimants, to which we must award the honor, I must say that the friends of Dr. Wells ask, for the sake of his reputation, that they should have an opportunity of presenting his claims.

I will state to the Senate one other fact. This pretended patent has never been regarded as of any validity. It has never been acted upon; it has never been enforced in any case; nor has any attempt been made to enforce it. If there is anything of that kind, it has been done in a corner. It has been done so that it has not come to my knowledge, or to the knowledge of the friends of Dr. Wells. Dr. Wells resided in my vicinity, in the city of Hartford. His office was in my own immediate vicinity, and it was a matter of public notoriety there that this discovery was made and reduced to practice by him in the year 1844; whereas the claim of Dr Morton is, that he made the discovery in October, 1846. Dr. Wells made the discovery in the fall of 1844. I myself have seen the affidavits of the principal surgeons and physicians of the city of Hartford to that effect. I have seen the certificates of men who were operated upon, whose teeth were extracted—whose tumors were cut out, and without pain. I have seen a certificate from the very chemist, who, at Dr. Wells's request, administered nitrous oxyd gas to him, and had one or two of his teeth extracted, for the purpose of testing the discovery; and when he found how successful it had been, he was overcome with joy at the immensity of the discovery.

All I ask is, that there may be a fair hearing upon the subject before this or any other sum is awarded to the meritorious person. There has been no such hearing. If Congress are disposed to go into that question, let justice be done; let all the parties have an opportunity to be heard for this great prize thus proposed to be offered to them; and let it be awarded to the person who deserves it. Sir, in what condition is the Senate? On the last day, or the last day but one, of the session, upon a bill providing for the support of the Army, involving some $8,000,000, we are called upon to decide upon a private claim—one that has not been reported upon, unless to-day by the committee of the House of Representatives—one that has never been referred to the Committee on Military Affairs or the Committee on Naval Affairs of this body—one over which they had properly no jurisdiction, but which they have investigated without the knowledge of the parties who are interested in the question.

As a member of this body, I ask for common justice for my constituents, for the widow and children of Dr. Wells. Let them be heard, and if they are not entitled to this bounty let it be so decided upon proof before a committee of this body, or any other tribunal whatever. I have proof of the claim of Dr. Wells, but I will not go into the particulars of that proof for the purpose of convincing the Senate, because the subject is not properly before this body. I hope, therefore, that the Senate, on the ground that it is out of order, will not incorporate into the bill a private claim of this kind, which is not legitimately here; and if they are disposed to do, or have power to do it, that they will not act upon it until the next session, when all the parties may be fairly heard.

Mr. PRATT. I certainly do not desire to prolong this debate. I wish to remind the Senate that this is a *quasi* judicial proceeding. We are sitting here as judges to decide whether there is or is not a debt due from the United States to the discoverer of this scientific principle, and if there is a debt, to whom it is due. We are to act, therefore, here as *quasi* judges to determine that question. The report upon that subject has been laid upon our tables tonight. I have not had an opportunity to read one word of it. I have not antecedently had the opportunities which other honorable members seem to have had. I want to ascertain the facts of this case. I have had no opportunity of hearing anything about it until the candles have been lit in this Chamber. Reports have been laid upon our tables tonight, and tonight only. I am informed by a member of the House Committee that he has made a counter report, which has not yet been printed, going to show that Dr. Jackson is the party entitled, if anybody, to this payment on the part of the Government.

As I have said, we are sitting here as judges to decide this question. How are we to decide it unless we hear both sides? Senators who, like the Senator from Louisiana, [Mr. Soule,] are willing to pay $100,000 to Dr. Morton, and the same amount to Dr. Jackson, and a similar amount to Dr. Wells, or anybody else who may present a claim for this discovery, may agree to this without investigation; but as representing the United States, and as it is a debt of gratitude that can be due to but one, I am willing to pay the party entitled to it; but we should have an investigation. We should have the means of judging. Every one should have an opportunity of judging for himself. I do not doubt that my friend from Wisconsin is perfectly prepared to vote, because he seems to have had full information before him so that he could investigate and judge for himself. I do not doubt that the Senator from Arkansas also has had information, but I have not. The report has been laid upon our tables since these candles were lit, and no member who has only the legitimate information given to the members of this body is prepared to judge in regard to it.

Mr. TOUCEY. The honorable Senator will allow me to state a fact. There has been no hearing on the part of the friends of Mrs. Wells before the committee. An eminent physician of the city of Hartford, who had himself used this remedial agent in 1845, before the pretended discovery of Dr. Morton, sent on to a colleague of mine in the other branch of Congress some affidavits that had been taken, and that member sent them to the committee, merely to apprize them that there was an adverse claim. But Dr. Morton was there with his counsel, and with his full proofs, and he has caused to be printed a report of the majority of the committee which has not been made, unless it has been made today

Mr. BORLAND. I want to say a word in simple justice to the committee of the other House. The Representatives, or a portion of the Representatives, from Connecticut, handed to the committee charged with this subject a bundle of papers purporting to be the evidence in support of the claim of Dr. Wells. There was no counsel before the committee representing that claim, but the committee thoroughly and carefully examined all the papers presented to them as evidence in support of it, and they came to the conclusion that there was no foundation whatever for the claim.

Mr. PRATT. Owing to the distance at which the Senator stood, with his back to me, I could not hear what he said, so that it will not enable me to make my speech any more intelligible.

One of the arguments used in this case is, that there has been a patent granted to Dr. Morton, and that, therefore, we need not go behind that patent to ascertain who was the discoverer of this element. Then, it follows, that in the first place, the Government gave him a patent, and now, in addition to that, you are to give him $100,000. But again, as I understand the honorable Senator from Connecticut, the patent was received upon the joint affidavit and joint application of doctors Jackson and Morton. They united in receiving the patent; therefore, because it was taken in that manner they both claim to be the discoverer of what is patented. But suppose it to be conceded that this Government ought to appropriate $100,000 to the discoverer of this scientific principle and application, ought we not to have the means to judge for ourselves, or ought we not to leave it to some authority to judge for us, who is to have the money? I am willing to appropriate the $100,000, and let the Supreme Court of the United States decide who is entitled to it. I am willing to appropriate the $100,000, and get the opinion of disinterested scientific men as to who is entitled to it; but I am utterly unwilling, when we cannot ascertain at all who is entitled to it, when we certainly have as strong evidence that the one is entitled to it as the other—throwing Dr. Wells for the moment out of the question—to see the whole amount paid to one of the parties. I am willing to vote for the amendment if it is changed so as to authorize the Supreme Court of the United States to decide who is the discoverer, and who is entitled to the money, and declare that the $100,000 shall be paid to the party who may be decided by the Supreme Court of the United States to be entitled to it. Suppose we as individuals were called upon to make such a payment out of our own pocket to one of several parties presented to us in the manner that these three doctors come before us, would we do it? Is there a gentleman in this Senate

who would agree to pay a man who claimed that from him, when there were three claimants occupying the position of these three doctors?—who would, without some judicial decision, pay to C in preference to A?

MR. CLEMENS. Suppose it was decided by forty courts, or by forty commissioners, that Dr Jackson was the original discoverer of this principle, can anybody go behind the patent?

MR. SMITH. Yes, sir.

MR. CLEMENS. How? Cannot Dr. Morton enforce it?

MR. SMITH. No, sir.

MR. CLEMENS. Yes, sir; he can enforce it. Dr. Jackson's release is on the face of the patent; and it cannot be decided in any other way.

MR. PRATT. I did not intend to say as much as I have said. I apprehend that the original discoverer is entitled to the patent; and if a party who is not the discoverer obtains a patent, the original discoverer can, in the way the law prescribes, secure the invalidation of that patent.

MR. CLEMENS. Dr. Jackson's release is on the face of the patent in this case

MR. PRATT. That will not secure Dr. Morton, if his claim as the original inventor can be refuted. But all I mean to say is, that, in the evidence before us, there is a doubt as to who is entitled to this money, supposing it to be a debt due from the Government of the United States; and in the existence of that doubt we are not in a position judicially to determine whom to give it to. If we are to appropriate the money, we ought to designate some tribunal to decide as to the relative rights of those who claim it.

MR. SMITH. I desire to offer a substitute for the amendment.

MR. PRATT. I understood the honorable Senator from Arkansas to say that this appropriation had been recommended by the War Department. Am I correct?

MR. BORLAND. I stated that the Secaries of War and Treasury had both recommended, not the payment of the particular sum mentioned in the amendment, but a fair and liberal allowance for the discovery, deeming it to be of great value.

MR. SMITH. Will the honorable Senator refer me to the document in which that recommendation is contained?

MR. PRATT. I am authorized by the Secretary of War, who is by my side, to say that to his knowledge he has recommended no such thing.

MR. BORLAND. I will read the letter of the Secretary of War:

WAR DEPARTMENT, WASHINGTON, *June* 21, 1852.

SIR:—I have received your letter of the 7th instant, inclosing sundry documents relating to the memorial of Dr. William T. G. Morton, who seeks remuneration from the Government for the discovery of the anaesthetic properties of sulphuric ether.

In reply, I beg leave to state that I have no information on the subject of this discovery other than that which I have derived from public rumor and from the documents you inclose, it being exclusively a professional question All the information which this Department could furnish the committee, is contained in the letter from the Surgeon General, which is among the papers you enclo-e.

Judging from this information, there can be but little doubt that this discovery is one of the most valuable contributions that science has ever made to the cause of humanity.

I do not know what the practice of the Government has been in relation to rewarding individuals for inventions or discoveries made by them, or, at least, compensating them for the use of them in the public service; but I do not hesitate to say that if it has been the practice of Congress to grant such rewards or compensation, Dr. Morton's claim is fairly entitled to the most liberal consideration.

Very respectfully, your obedient servant,

C. M. CONRAD, *Secretary of War.*

Hon FREDERICK P. STANTON,
Chairman Committee on Naval Affairs, H. R.

Here is the letter of the Surgeon General of the Army, accompanying the letter of the Secretary of War:

SURGEON GENERAL'S OFFICE, *March* 1, 1852.

SIR:—In compliance with your verbal request to be furnished with information in regard to the employment of anaesthetic agents in the Army of the United States, and also for an expression of opinion as to the value and importance of this class of remedial agents, I have to state:

That sulphuric ether and chloroform were used to some extent in the military hospitals established at the theatre of war in Mexico, but the use of those articles was not so general as at present, for the reason that the apparatus at that time believed to be essential to their proper and safe administration, was not adapted to service in the field.

At the present moment it is believed that no surgical operation of importance is performed by the medical officers of the Army without the aid of some anaesthetic agent.

Previous to the discovery of this new application of sulphuric ether, the annual supply of that medicine was one pound for every hundred men. On the revision of the standard supply table, by a board of medical officers, in 1840, the pure washed sulphuric ether was substituted for the ordinary sulphuric ether, and the quantity allowed was increased one hundred per cent. At the same time another anaesthetic agent, the tincture of chloroform, commonly called chloric ether, was added to the supply table, and is now regularly furnished to the medical officers in such quantities as in connection with the sulphuric ether, will suffice to meet all the demands of the service in this particular.

Although the discovery of this new therapeutic effect of sulphuric ether has led to the introduction and employment of other anaesthetic agents, this does not in any way militate against the merits of the original discovery, which I regard as one of the most important and valuable contributions to medical science, and to the relief of suffering humanity, which has ever been made, the only discovery to be compared therewith being that of vaccination, which has rendered the name of Jenner immortal.

Through the influence of these remedial agents, the surgeon is not only enabled to perform the most extensive and difficult operations, undisturbed by the cries and struggles of the patient, but what is of far greater importance, the patient being rendered insensible, escapes that shock to the nervous system, which in itself is not unfrequently fatal. For this reason operations can now be performed with much more safety than heretofore, and that, too, in cases in which the attempt to perform them would have been forbidden by the general condition of the patient.

If the physician this class of remedial agents promises to be of the greatest utility, though their application in the treatment of disease has yet to be more fully developed.

It will suffice at this time to allude to their employment for the relief of suffering woman in the hour of her greatest trial, and at the moment she claims our warmest sympathies. That these agents can be safely used in parturition, so as to afford full and entire exemption from pain to the mother, and with safety both to her and to the child, has been amply demonstrated.

In conclusion, permit me to congratulate you upon the flattering testimonial you have received from the National Institute of France, for this discovery, and to express the hope, that inasmuch as it is impossible for you to derive any pecuniary benefit therefrom in ordinary course by letters patent, you may receive from your country that acknowledgment of your merit which is due to one who has conferred so great a boon upon mankind.

I am, very respectfully, your obedient servant,

TH. LAWSON, *Surgeon General.*

W. T. G. MORTON, M. D.
Brown's Hotel, Washington, D. C.

MR. PRATT. Mr President, the Senate will have perceived, from the reading of those letters, that the statement was stronger, as originally made, in reference to the recommendation from the War Department than they warrant; for the Secretary of War says that it is a question which he knows nothing about; that he knows nothing at all in reference to who was the discoverer of this principle; that he knows nothing of its value as a discovery except from the documents which are before the committee to the War Department, and from the letter of the Surgeon General, which was on file in that Department: that the Department had no information except that letter which has been read by the honorable Senator from Arkansas; but that judging from it, without any knowledge on the part of the Department, whoever may be the discoverer ought to be rewarded by the country if it was in accordance with our practice and usage, that such reward should be rewarded.

MR. BORLAND. I did not say that the Secretary of War undertook to decide who was the discoverer, but simply, assuming that somebody had discovered it, he did recommend that a liberal acknowledgment, in the way of compensation, should be made by the Government. That is all that the letter sustains.

MR. PRATT. As I understood the statement of the Senator, it was that the amendment which was offered was recommended by the War Department.

MR. HUNTER. If the question can be taken now, I will give way; but if not, I desire to say a few words.

Mr. President, I think it a very obvious from this discussion that a general system ought to be adopted upon which to settle the priority of such an invention as this; nor do I believe that it is proper for this Government to undertake to settle such a question, and buy such an invention. The cases which have been cited to were exceptions. In the case of McCalla and Boon, their invention was only applicable to mints, and the United States had the monopoly in the refining and coining of money. They could not be compensated, therefore, unless something was given to them. But this one has a patent. If the discovery is worth anything, I presume he could enforce it against anybody who used it—the agents of the United States, as well as others. I suppose the United States, if they wished the use of the patent, could buy it; and I suppose they could buy it only upon the same principles upon which individuals could buy it. That would be legitimate enough; but when it is proposed not really to buy the use of the invention, but to use that as an indirect mode in which to decide the question of priority, and by which to reward such a discovery and the exercise of such ingenuity, I think that we are departing from our proper sphere. It seems to me that this is a case of the latter sort. It would be just as proper to attempt to settle any other question in relation to the priority of a scientific invention without regard to its practical use; because, if we are to look to that, this man possesses a remedy, through his patent, against any who use his discovery, whether agents of the United States or not. But the main object for which I rose was to suggest to the Senate that it is now obvious that unless this proposition be withdrawn, or unless by general consent we will agree to vote upon it at once, it will consume the residue of the night. I hope, therefore, either that it its friends will withdraw

it, for this is not the proper place for its consideration or else that its opponents will agree to permit us to vote upon it.

MR. SHIELDS. I join heartily in the latter expression of my friend from Virginia; but I hope the amendment will not be withdrawn. I hope it will be voted upon, one way or the other, for this reason; I prophecy that if it is not finally determined here tonight, next session we shall have fifty claimants for the discovery. They will spring up in every town and village throughout the country.

MR. SMITH. I will save the Senate all trouble on this subject. I will offer an amendment having for its object the organization of a disinterested tribunal to decide this question. I move to amend the amendment by making it read as follows:

Be it enacted, &c., That the sum of $100,000 be appropriated as a national reward for the discovery of the anæsthetic properities and effects of sulphuric ether and its application in surgical and medical practice; and that the President of the United States be authorized to appoint three distinguished scientific men as commissioners who shall examine the claim which may be set up by any person or persons to the discovery of the anæsthetic effects of sulphuric ether, and its application in surgical and medical practice, and the said commissioners shall award the sum hereby appropriated, after deducting the expenses of their commission, to such person or persons, or the heirs of such person or persons as they shall determine to be entitled to the credit of said discovery and application, in such proportion as they shall judge to be due to the merits of the parties who have made said discovery and application.

MR. WELLER. Question!

MR. SMITH. I do not know but that the honorable Senator from California, who seems to have made up his mind pretty fully on this subject, is about to cry "Question, Question!" to prevent my submitting my amendment to the consideration of the Senate. That is the sort of treatment which members of this body ordinarily receive.

MR. WELLER. The Senator from Connecticut took his seat, and I took it for granted that he was through. But if he has any information to communicate to the Senate, I have no doubt the Senate will hear him patiently, a hough it would, perhaps, be the first time that the Senate ever received any information from him.

MR. SMITH. I have nothing to say in regard to the courteous, gentlemanly, and senatorial remark just made by the Senator from California, that if I now communicate any information to the Senate, it will be the first time I have ever done so. That was a very courteous, gentlemanly, and senatorial remark to make here. That is all the notice which I shall take of the Senator or of his remark.

MR. BROOKE. I beg leave to differ from the honorable Senator from Connecticut on this question. While he is a prominent member of the party of which I claim to be an humble member, yet on this occasion I claim the liberty of entering my protest and dissent to his views, although the subject under consideration may not be connected with the general politics of the country. The point made by the honorable Senator was—

MR. SMITH. I desire to know how my honorable friend from Mississippi obtained the floor?

THE PRESIDENT. By rising and addressing the Chair. The Senator from Mississippi will proceed.

MR. SMITH. I offered an amendment to the Senate. I saw that the Secretary could not read my manuscript well, and I stepped to his desk to assist him, intending to resume my remarks. It is rather unusual to take the floor from a Senator in such a case.

THE PRESIDENT. Under these circumstances the Senator from Mississippi was not entitled to the floor. The Senator from Connecticut will proceed.

MR. WELLER. If the Senator from Connecticut has the floor, I desire to ask him to explain a remark made a few moments ago, which may admit of a different construction from what he intended.

THE PRESIDENT. If the Senator yields the floor, he may not get it again.

MR. WELLER. I apprehend it will be waived for a personal explanation.

THE PRESIDENT. That depends upon the Senator himself.

MR. SMITH. I desire to resume my remarks. I have no feeling whatever in relation to this subject other than a desire that right and justice should be done in respect to the matter we have now before us. My colleague and myself may, I suppose, be properly regarded as the representatives of a destitute widow, and of several orphan children residing in the city of Hartford, in the immediate vicinity of my colleague; and I should feel that I was wanting in my duty, I should more than abhor myself, I did not stand up here, and plead the cause of the widow and the fatherless. And under what circumstances, Mr. President, am I brought to the consideration of that cause? Am I not taken unawares? and is not my honorable colleague taken unawares? Was this proposed appropriation contained in the original bill? Did the Committee on Military Affairs put it in the original bill, and print it for the benefit of the Senate, and for the information of my colleague and myself? If they had done so, we should have had notice of this.

MR. SHIELDS. Will the Senator permit me to ask him if my colleague in the House did not notify him that this was under discussion before the committee there?

MR. SMITH. I speak of the committee of the Senate. What if it were before a committee of the House? What was that to do with the question? I had no idea that you had it here under consideration, in the secret recesses of this Capitol. I mean to treat my honorable friend from Illinois with great respect; I cast no imputation upon him; I cherish for him sentiments of very high respect; I believe he has an honest conviction that this is a just claim in favor of Dr. Morton; but if I could divest the mind of my honorable friend—and I believe I could—of his precommittal—I mean his precommittal so far as Dr. Wells is concerned—and he would give the case a fair, honest, and impartial consideration—and I know he is not in the habit of giving any other consideration to this or any other case—I should be greatly disappointed when the proof was brought fully before him, if I did not convince him that this is a just cause in favor of the widow and children of Dr. Wells, and utterly unfounded as regards Dr. Morton. I complain not in the sense of censure; but of the fact that this proposition was not put originally into the bill and printed, so that we and the country might be notified of it. What has been done? Why, sir, on the very eve of the session, at the close of the deliberations of a session that has now extended over a period of nine months, is brought in a proposition in manuscript, unprinted, uncommunicated to anybody, until it was laid before the Senate, and I have not time even to get the proof in favor of Dr. Wells and his family. I have sent over to the House of Representatives and tried to obtain the proofs; I have resorted to the members of the committee; I have applied to the chairman of their committee; but I cannot obtain them; and yet it is insisted that this case is to be rushed to a judgment, that a verdict is to be rendered without giving this family any opportunity to be heard from the lips of my colleague and my humble self.

In my amendment I have made a fair proposition. I have proposed to refer the matter to disinterested men to see who shall have this reward, to see who is the discoverer of the principle; and if there are two or more discoverers, to decide on their relative merit, and to apportion the reward among them according to the justice and equity of the case. I desire to inquire of honorable Senators who favor the original proposition, whether they are resolved that Dr. Morton shall have this money anyhow, right or wrong, hit or miss? What does my colleague tell you? He tells you, and we all know, that Dr. Morton never pretends to have made the discovery until the fall of 1846. And is my colleague's testimony to be set down for nothing? Has he stood up here in the presence of the Senate of the United States to promulge that which is not a fact, when he tells you that this discovery was made in the city of Hartford, in his own immediate vicinity, in the fall of 1844? I do not know whether he said he saw it applied in 1844.

MR. TOUCEY. If my colleague will allow me, I will explain. I have never seen it applied; but it is a matter of public notoriety, and I have seen the testimony of all the principal physicians and surgeons in the city of Hartford, that the discovery was made and introduced in 1844, by Dr. Wells; and I have seen the testimony of some of the surgeons that they made use of it, putting patients in a state of insensibility under the amputation of a limb, and other surgical operations, and that it was communicated to a medical journal in the city of Boston in 1845. That is what I said.

MR. WALKER. Will the Senator allow me to have read a portion of the report of the Select Committee of the House? It may give him some information.

MR. SMITH. With great respect to the honorable Senator from Wisconsin, I have to say, that if he will bring both the majority and minority reports, if he will bring all the papers here, I stand ready and desirous to have them read.

MR. WALKER. The Select Committee in the House was composed of five members. Four out of the five have reported upon the report, a portion of which I propose to have read. They most emphatically declare that Dr. Wells, after having pursued the investigation, failed; that he attempted to make the discovery, but it was a failure, and his letter to Dr. Morton shows that.

MR. BRODHEAD. Will the honorable Senator from Connecticut allow me to make a suggestion to him? I am with him on this question. I intend to vote against the amendment; but I suggest to him to let us take the sense of the Senate upon the main proposition, as submitted by the Senator from Illinois, from the Committee on Military Affairs; and then, if it is not voted down, he can renew his proposition, after the bill is reported to the Senate.

MR. SMITH. I most cheerfully and cordially embrace the suggestion of my friend from Pennsylvania, for I have no disposition to intrude upon the Senate. I speak from no pleasure, but from the promptings of my heart, which, perhaps, is too much alive to the situation of the family of the late Dr. Wells. Perhaps I have displayed too much feeling in relation to it; but for the present I withdraw my amendment.

THE PRESIDENT. The question, then, will be on the amendment reported from the Committee on Military Affairs.

MR. BRODHEAD asked for the yeas and nays upon it; and they were ordered.

MR. SEWARD. I must say a word, because the position which I hold in regard to this question renders a personal explanation necessary. Dr. Morton and his friends invited my attention to this subject, but it was under circumstances such that I could not go into an investigation so laborious, so difficult, as I knew such a question must be; and as I heard nothing from any one opposed to his pretensions, I at last stated to him, "it is quite unnecessary for me to occupy myself in the examination of the claim, for I had already been predisposed in its favor." I have now come to the conclusion, from what I have heard in this debate, that it is unsafe in regard to the public Treasury, unsafe in regard to public

justice, unsafe in regard to the promotion of the cause of science, to give my vote in favor of a verdict for this claimant; and I make this explanation in order that what may seem an inconsistency may be understood on his part and on the part of his friends to whom I had spoken on the subject.

I have one or two words only to say upon the merits of this application. What has transpired here has proved sufficiently that we are engaged in one of the most difficult legal investigations that occur in the courts of justice. In the whole course of judicial proceedings I know of no question that ever was attended with so great difficulty as the settling of claims for the priority of inventions among inventors. I have known a question of that character to have engaged the attention of a court two days, four days, a week, a month. I am sure that if this question properly comes before us at all, it does not come before us in the right way, and at the right time—certainly not at the right time, in the last hours of a protracted session, when the minds of Senators are embarrassed with a thousand harassing questions, which absorb all the powers of an intense and abstracted attention—not in the right way, for a question so important as the appropriation of $100,000 out of the public Treasury is worthy of a distinct and separate investigation, under a distinct and separate bill; and this is not such a bill, but it is a bill which gathers in, and is intended to gather in, only palpable cases of indebtedness on the part of the Government, and of necessary appropriations, founded upon estimates, for carrying on the ordinary administration of affairs. It is not the right way, in my judgment, for another reason. I do not say—perhaps I am not prepared to say—that the Constitution of the United States does not authorize the proposition which is before us. If the appropriation is regarded in one light, it may. If it is to be regarded as a purchase by the Government of the right to use this discovery—if that be its true intent and character—then the question would be a plain and simple one. The whole course of this debate, however, shows me that such is not the purpose or intent of this legislation, but that it is the design to reward the discoverer of a principle which is beneficial to the country at large and to mankind.

The Constitution of the United States provides that "Congress shall have power to promote the progress of science and useful arts," and I presume we have no power to pay for inventions, except upon the principle of promoting science. I say that the Constitution of the United States confers upon Congress the power "to promote the progress of science and useful arts, by securing for limited times to authors and inventors, the exclusive right to their respective writings and discoveries;" and under that express provision of the Constitution, the Patent Office is established, whose business it is to discover who are true and original inventors, and a system of protection for property, is executed in the language and spirit of the Constitution, by securing to them the use of their inventions. But we have now assumed, in regard to the discoverer of this one thing, to exercise special and extraordinary legislation. We have assumed that the Patent Office and the patent system are incompetent to reward him, and that we ought to exercise extraordinary and special legislation in his favor. This raises two questions—two grave questions—in my mind. First, whether this claimant, Dr. Morton, is the true and original discoverer. That is a question between him and others; and I am satisfied that it cannot be investigated sufficiently in this way, and under these circumstances, but that if Congress undertake to settle it, it ought to be referred to a special commission or committee, which would take all the proofs, lay them all before us, and bring the attention of the Senate to it distinctly and separately from all other questions, and every other case, with sufficient time for its examination. But, sir, it brings up another and still graver question. If we do individuals injustice, society may recover from it; but when I am asked to appropriate $100,000 to the discoverer of ether, as a great benefactor, I am obliged to look back through the history of the past, and to inquire what other discoveries have been made, in the history of this country, which were beneficial to the country and useful to mankind, how they have been rewarded, and to compare this discovery with discoveries that have preceded it, and this reward with rewards which have been bestowed on other public benefactors.

Sir, I do not wish to degrade this discovery. I believe it to be a great, an eminent, a benevolent, a beneficent one. But I remember other discoverers who have gone from these halls year after year, until they sank to their graves broken hearted, and left a legacy of poverty and indigence to their posterity; such, I think, was the inventor of the iron plough, whose children, orphan children, female children, I saw, through the three successive years that I have been here, leave these halls unrewarded, and even without obtaining a hearing. And the inventor of the steam engine, in its application to navigation, went to his grave without a reward. The rewards which were conferred upon him by the State of New York, were pronounced unconstitutional, because the field in which he exercised his invention was a national field, and its benefits were national, and extended to all mankind. Year after year, through half a century, the heirs of Robert Fulton solicited, petitioned, and implored Congress for some reward, and I have yet to learn that it has conferred upon them the poor boon of an acknowledgment of the national gratitude.

Sir, I do not raise these claims, these obsolete claims for the purpose of degrading this one; but I do raise them for the simple purpose—to which I think they are legitimate—of showing, that at this time, in connection with this appropriation bill, on this Saturday night, the last working day but one of this session of Congress, it is too late, it is out of time and out of place, to expect to come to that impartial, just, and enlightened judgment which the interests of inventors, the interests of science, and the interests of humanity require at our hands. Therefore, I cannot vote for the amendment, although I have a strong predisposition to the claim if it is just.

MR. MALLORY. I am pleased to have this opportunity to manifest, by a vote upon this proposition, my appreciation of the importance of the subject to which it refers, and, sir, if no voice in its behalf had been hitherto raised, if no advocate had ever before appeared to press the claims of him whose successful devotion, whose self-sacrificing labors have secured for him throughout the earth this heaven born gift—I would have considered it one of the high privileges of the place I occupy to stand forth in that attitude. But, sir, such fortunately is not its position; for the earnest appeals of men, women and children, the united and consistent testimony of the learned and the unlettered throughout this broad land, have raised up for it here unwavering friends.

This amendment, Mr President, proposes to pay to the discoverer of the anaesthetic properties of sulphuric ether, inhaled, and of their extraordinary advantages to medicine and surgery, $100,000, upon the condition that he shall relinquish it to the free enjoyment of mankind, and abandon all the rights of a discoverer and patentee. If the question be asked, What is the character of the service rendered, what is the utility of the discovery? —the response comes from thousands of our own fellow citizens, in every walk of life, whom gratitude has made eloquent. It comes from the lowly couch of the poor-house patient, and from the aristocratic mansion of the millionaire—from feeble woman in the agonies entailed upon her first disobedience, and from the stern, strong man writhing in pain. It comes from your battle-fields, from your military, naval, and civil hospitals, from your gallant soldiers and sailors tortured by wounds and amputations. It comes to you from the practitioner in every department of medicine, and with our consent the surgeons of the Old and the New World hail it as the great discovery of the age. Its claims have been examined by select committees of Congress, aided by able counsel, with an industry and accuracy equally honorable to them and to the subject. The trustees of the Massachusetts general hospital presented the discoverer with $1000 and an appropriate letter. The chiefs of our own Departments, our Surgeon General, and the head of our Naval Bureau of Medicine and Surgery, give it their unqualified approval, and the Academy of Sciences of Paris, after a thorough investigation of its character, conferred upon its discoverer the "Montyon golden medal" as an extraordinary mark of its approbation.

Such are a few of the thousand evidences of the various characters from Europe and America in its favor. And well, sir, does it merit this praise. Hitherto the surgeon's skill, though advancing with gigantic strides, has been circumscribed and controlled by the power of endurance of his patient; and many operations which comparative anatomy justifies and demands for the salvation of life, have been rendered impracticable by their tortures upon an enfeebled or agonized frame, or by their violent shock to the whole nervous system; and thousands have annually perished whom this discovery might have saved. Men of undoubted courage, wounded at last, after facing death in many forms shrunk with undefined terror from the prospect which the cold-blooded torture of the surgeon's knife holds before their eyes; and timid woman, sinking beneath disease, not unfrequently prefers the pains of death to the untold horrors of the operator's table. But all this is now passed. The knife has lost its terrors, the tourniquet and saw are regarded without a shudder, and the appearance of the surgeon by the pallet of the untimely sufferer is hailed with joy, for he not only banishes pain, but substitutes for an anguished frame the happy dreams of a joyous spirit. In the language of the venerable and eminent Dr Warren—

"A new era has opened to the operating surgeon! His visitations on the most delicate parts are performed, not only without the agonizing screams he has been accustomed to hear, but sometimes with a state of perfect insensibility, and occasionally even with the expression of pleasure on the part of the patient. Who could have imagined that drawing the knife over the delicate skin of the face might produce a sensation of unmixed delight?—that the turning and twisting of instruments in the most sensitive parts might be accompanied by a beautiful dream?—that the contorting of anchylosed joints should coexist with a celestial vision? If Ambrose Paré, and Louis, and Dessault, and Chesselden, and Hunter, and Cooper, could see what our eyes daily witness, how would they long to come among us, and perform their exploits once more! And with what fresh vigor does the living surgeon, who is ready to resign the scalpel, grasp it and wish again to go through his career under new auspices!"

If I felt justified, Mr President, in view of the pressing legislation yet before us, I would embrace this occasion to give the conclusive testimony of the principal practitioners of Europe and America in its behalf; but I do not feel authorized to consume a moment beyond a mere reference to them. In the eloquent testimony of Holmes—

"The knife is searching for disease—the pulleys are dragging back dislocated limbs—nature herself is working out the primal curse, which doomed the tenderest of her creatures to the sharpest of her trials; but the fierce extremity of suffering has been steeped in the waters of forgetfulness, and the deepest furrow in the knotted brow of agony has been smoothed forever."

And now, Mr President, if it be difficult to establish a standard by which merit generally is to be rewarded, how utterly impossible must it be to determine its proper

bounds in a case like the present, in which an humble individual is the donor, and the whole human family the recipient. His most enduring and valuable reward will be in the undying gratitude of a posterity whose lot is suffering and pain, and a supreme happiness flowing from gratitude to God for being made the medium of such a boon to his creatures. But, sir, let us fulfil *our* duty. We cannot PAY Dr. Morton. His services are beyond price; but we can place his future life beyond the reach of poverty, and in this manner do justice to ourselves; for, Mr. President, to the living searchers after truth, as well as to those children of genius who are yet to struggle in her paths, and in the eyes of all honorable men, the course of the American Senate upon this question will be a beacon of warning or of hope.

I believe not the worn-out apophthegm, that Republics are ungrateful. Ingratitude is the crime of men, not of political organization—and the sons of Adam possess in common the same virtues and vices. But yet, sir, there is much upon history's page to justify the proposition, even within our own short political existence. The graves of our revolutionary sages are unknown to their free and happy descendants. No Old Mortality renews their fleeting letters; and the monument of its father and hero struggles lingeringly upwards, stone by stone, in spite of their seeming indifference.

Fulton's merits were disregarded; and he was suffered to die owing more dollars than would have covered him in his grave. In pleasing contrast to this, sir, is the grant of the British Parliament of $150,000 to Dr Jenner for his discovery of vaccination; and its liberal reward of discoveries in various walks of science. I am persuaded that the objection based upon a constitutional prohibition, made by the honorable Senator from New York, is not seriously urged; and certainly upon one of the alternatives suggested by him, we can reward this applicant. I never saw him till within a day or two, and I know personally nothing of him, but entertain no doubt of the justice of his claim, and hope the amendment will pass.

MR HALE. I desire to state a fact which has come to my knowledge since this discussion commenced. I do not know whether it will have any influence upon the votes of Senators to-night; but there is a gentleman in this Chamber now who has informed me, and he is ready to pledge his honor and reputation to it, that neither Dr. Morton, nor Dr. Jackson, nor Dr. Wells has anything to do with the original discovery of this principle; that it was discovered and applied to practice in the city of New York by a young physician who is now in his grave; that if there is any merit belonging to it at all, it belongs to him, and if there is any meritorious reward due to anybody, it is to his orphan sister. This gentleman is ready to pledge his honor and reputation that if the subject is postponed until December, he can by irrefutable proof establish that fact to the satisfaction of any tribunal to which it may be submitted. Upon this I express no opinion, but as the statement was made by a gentleman of reputation, I thought it my duty to communicate it to the Senate before the vote is taken.

The question was taken by yeas and nays upon the amendment, and resulted—yeas 17, nays 26, as follows:

Yeas—Messrs Borland, Brooke, Clemens, Dodge of Iowa, Douglas, Gwin, Houston, James, Jones of Iowa, Mallory, Morton, Shields, Soulé, Stockton, Sumner, Walker, and Weller—17.

Nays—Messrs Bradbury, Bright, Brodhead, Cass, Charlton, Chase, Clarke, Dawson, Downs, Felch, Foot, Geyer, Hamlin, Hunter, King, Mangum, Meriwether, Miller, Norris, Pearce, Pratt, Seward, Smith, Spruance, Toucey, Underwood, Upham, and Wade—26.

So the amendment was rejected.

MR. DE SAUSSURE, when his name was called, stated that he had paired off on the question with Mr. Adams.